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ABSTRACT

As part of a review of the operation of the Consumer Product Safety Commission (CPSC), a hearing was held to receive testimony concerning the safety of all-terrain vehicles (ATVs) and recommendations for protection of consumers who purchase them. Of particular interest was the question of whether the Commission, due to budget cuts or reliance on voluntary standards, had implicitly encouraged or tolerated industry's propounding of inadequate safety standards. Testimony concerns the issue of whether the production of ATVs should be regulated by the government; activities of the CPSC's ATV Task Force; hazzards and marketing techniques associated with ATVs; the seriousness of the ATV safety issue; the position of ATV manufacturers and the industry's product safety efforts; the position of ATV users, as represented by the American All-Terrain Vehicle Association; ATV accidents resulting in injury to children; and ATV safety training by dealerships. Extensive materials provided for the record include letters, statements, and responses, and the text of a civil suit brought by the United States of America against General Motors Corporation (GMC) in which it is alleged that GMC's 1980 X-cars are defective. (RH)

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ALL-TERRAIN VEHICLES

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HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND
COMPETITIVENESS

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

MAY 12, 1987

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ALL-TERRAIN VEHICLES

TUESDAY, MAY 12, 1987

House of Representatives, Committee on Energy and Commerce, Subcommittee on Commerce, Consumer Protection, and Competitiveness,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:32 a.m., Hon. James J. Florio (chairman) presiding.

Mr. Florio. Ladies and gentlemen, two of the members are on their way. We will wait just a few more minutes and commence at that time.

I would like to welcome all in attendance to the first of what will be a series of hearings involving our responsibility as a subcommittee to reauthorize the Consumer Product Safety Commission.

As many of you know, this is a subject that is new to this subcommittee, and we are looking forward to evaluating the performance of the commission in the hopes that in the reauthorization we will be able to review and perhaps make improvements if it is determined that that is necessary in the functioning of the commission.

Today the subcommittee will examine the question of the safety of all-terrain vehicles and efforts that have been suggested to protect consumers who purchase them. As I said, this will be part of our ability to or our inclination to review the entire operation of the Consumer Product Safety Commission.

Unfortunately, with regard to ATV's, the statistics appear to speak for themselves, and they appear to imply that something is amiss in the regulatory system that is designed to review the safety of this particular product.

According to the Consumer Product Safety Commission, there have been thousands—tens of thousands—of injuries treated in hospital emergency rooms, and hundreds of reported deaths from ATV's; almost 700 deaths in the last 5 years. Children are particularly vulnerable, as almost half of the deaths and injuries involve children under the age of 16.

According to the industry's own statement, just over 1 percent of the riders are injured in a year's time. I can't help but note that if this same percentage of injuries and deaths occurred in the operation of Amtrak, there would be a sense of outrage, the need to address that industry's performance.

The Consumer Product Safety Commission, after several years of study, has finally taken action. It has proposed to go to court to require ATV manufacturers to offer recalls at the consumer's option for certain types of ATV's. It seeks to require free training for ATV purchasers, and it has asked the Justice Department to take the case to court, but as of yet, as I understand it, the Justice Department has not responded.

This is particularly disconcerting inasmuch as the statute appears to contemplate a 45-day response period when the initiation of an action as an imminent hazard case is proposed.

The matter was formally referred to the Justice Department on or about February 1. It is now some 90 days later, and it is our understanding that actual injuries and even deaths may have occurred in the period of time when we have had some request for action, and no action has been forthcoming.

I have just received a letter from Congressman Doug Barnard, chairman of the Commerce, Consumer and Monetary Affairs Subcommittee of the Government Operations Committee. Congressman Barnard's subcommittee conducted an extensive examination of the safety of ATV's, and recommended that three-wheeled ATV's be recalled. The Congressman is extremely concerned by the unexplained delays at the Justice Department, and without objection, I would like to insert his letter into the record at this point.

[The letter referred to follows:]

[illegible]

ONE HUNDREDTH CONGRESS
Congress of the United States
House of Representatives
COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
WASHINGTON, DC 20515

[illegible]

May 8, 1987

Hon. James J. Florio, Chairman
Subcommittee on Commerce, Consumer Protection
  and Competitiveness
H2-151 HOB Annex 2
Washington, DC 20515

Dear Jim:

I am gratified to know that your Commerce, Consumer Protection and Competitiveness Subcommittee of the House Energy and Commerce Committee will hold a hearing on May 12, 1987, concerning the risks arising from the use of All-Terrain Vehicles (ATV's) and the Consumer Product Safety Commission's (CPSC) oversight of this problem.

As you know, the Commerce, Consumer, and Monetary Affairs Subcommittee, which I chair, has held hearings, and has issued a report on the CPSC's response to the hazards of All-Terrain Vehicles. A copy of the subcommittee's report, entitled "Consumer Product Safety Commission's Response to Hazards of Three-Wheel All-Terrain Vehicles [ATV's]," adopted by the Government Operations Committee on July 18, 1986, is enclosed. I request that a copy of this letter and the Committee's report be made a part of the record of your hearings.1/

The report found that "the use of ATV's presents both an unreasonable and imminent risk of death and serious injury requiring immediate enforcement action by the Consumer Product Safety Commission." The committee report recommended, among other things, that the CPSC use its powers under Sections 12 or 15 of the Consumer Product Safety Act to seek a recall of all three-wheel ATV's.

After receiving the report of its own ATV Task Force on September 30, 1986, the Commission found ATV's to present an "imminent hazard" and voted on December 12, 1986, to, in effect, seek a recall of ATV's under Section 12 of the Consumer Product Safety Act. Pursuant to its statute, the Commission decided to ask the Justice Department to represent it in the case to be brought. I understand that the matter was formally referred to the Justice Department on or about February 1, 1987.

Three months has passed since that referral. Although Justice is required to act within 45 days, no such decision has been made. In the interim, I understand that the Justice Department has met with lawyers for the industry and has received briefs from the manufacturers of ATV's. I have separately inquired, by letter dated May 6, 1987, to Attorney General Edwin Meese, as to whether these interventions have slowed down Justice's decision process and to when we can expect a decision. A copy of my letter to the Attorney General is attached.

I trust that the Justice Department will follow the recommendation of the Government Operations Committee and the CPSC and bring an action without further delay to stop the continuing toll of deaths and injuries from these vehicles. It is unconscionable for this delay to have occurred. In July 1986 this subcommittee recommended a recall and ban of all three-wheel ATV's. It took the CPSC until December 1986 to come to the same conclusion. At that time the Commission determined ATV's to present an "imminent hazard." Now, five months later, nothing has been done to implement that determination. In the interim, many deaths and injuries have occurred. It is instructive to note that when this subcommittee held hearings in May 1985 there were 161 deaths known to the CPSC. The latest figures show 696 deaths as of March 1987.

In my view, and in the view of a majority of the House Government Operations Committee and a majority of the members of the CPSC, these vehicles do indeed represent an "imminent hazard." Attempts to work out a voluntary arrangement with the industry have proved to be fruitless. There is no "fix"; there is no remedy except removal of these dangerous items from the market. Under these circumstances, an enforcement action must be brought immediately.

I commend you for holding this hearing and urge you to do whatever you can to insure that an enforcement action is brought without further delay.

Sincerely,

Doug

Doug Barnard, Jr.
Chairman

Enclosures

DB:tjj:b

[1] The report referred to "Consumer Product Safety Commission's response to hazards of three-wheel all-terrain vehicles (ATV's) House Report 99-678, Union Calendar No. 405 may be found in the subcommittee files.

[illegible]

ONE HUNDREDTH CONGRESS
Congreſs of the United States
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COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
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WASHINGTON, DC 20515

[illegible]

May 6, 1987

Hon. Edwin Meese III
Attorney General of the
United States
Department of Justice
Washington, DC 20530

Dear Mr. Attorney General:

In pursuit of its oversight jurisdiction for the Consumer Product Safety Commission, this subcommittee has conducted an extensive investigation, has held hearings, and has issued a report on the CPSC's response to the hazards of All-Terrain Vehicles (ATV's). A copy of the subcommittee's report, entitled "Consumer Product Safety Commission's Response to Hazards of Three-Wheel All-Terrain Vehicles [ATV's]," adopted by the Government Operations Committee on July 16, 1986, is enclosed.

The report found that "the use of ATV's presents both an unreasonable and imminent risk of death and serious injury requiring immediate enforcement action by the Consumer Product Safety Commission." The committee report recommended, among other things, that the CPSC use its powers under Sections 12 or 15 of the Consumer Product Safety Act to seek a recall of all three-wheel ATV's.

After receiving the report of its own ATV Task Force on September 30, 1986, the Commission found ATV's to present an "imminent hazard" and voted on December 12, 1986, to, in effect, seek a recall of ATV's under Section 12 of the Consumer Product Safety Act. Pursuant to its statute, the Commission decided to ask the Justice Department to represent it in the case to be brought. I understand that the matter was formally referred to the Justice Department on or about February 1, 1987.

Three months has passed since that referral. Although the statute provides for a Justice Department decision within 45 days, no such decision has been made. In the interim, I understand that the Justice Department has met with lawyers for the industry and has received briefs from the manufacturers of ATV's. As you know, under normal circumstances, there would be no public knowledge of the Justice Department's consideration of such a matter, but in this case the fact that Justice was considering the case became public knowledge. Accordingly, under normal circumstances the manufacturers would not be given an opportunity to present briefs and to meet with Justice Department officials. In addition, I am informed that Justice Department attorneys have attended meetings in California with CPSC officials and industry representatives.

I am concerned about the unconscionable delays attendant to this matter. In July 1986 this subcommittee recommended a recall and ban of all three-wheel ATV's. It took the CPSC until December 1986 to come to the same conclusion. At that time the Commission determined ATV's to present an "imminent hazard." Now, five months later, nothing has been done to implement that determination. In the interim, many deaths and injuries have occurred. It is instructive to note that when this subcommittee held hearings in May 1985 there were 161 deaths known to the CPSC. The latest figures show 696 deaths as of March 1987.

I am writing to urge that the Justice Department act without further delay to bring the case requested by the CPSC. I also would like answers to the following no later than May 18, 1987:

1. With respect to Justice Department meetings with representatives of ATV manufacturers and the Department's receipt of briefs from them
    a. Under what specific set of circumstances did the meetings and receipt of briefs take place? That is, who requested the meetings and submission of briefs; and what was the specific purpose of these meetings and briefs?
    b. Please set forth the dates and places of each such meeting and identify the Department employees, CPSC representatives and private sector persons in attendance at each.
    c. Provide copies of all briefs and other written materials submitted by the manufacturers or their representatives.
    d. What is the normal process? Does Justice normally allow meetings and briefs before it decides whether to represent another government agency?
2. a. What are Justice's considerations in deciding whether to bring this case? Does it turn on available resources, the nature of the case, or other criteria?
    b. When will Justice act in this matter? Why has it taken so long to come to a decision?
3. Has any person, other than those associated with the manufacturers, interceded with Justice on this case? If so, supply names, copies of letters, dates, persons approached, etc.

Sincerely,

Doug Barnard

Doug Barnard, Jr.
Chairman

Enclosure

DB:tjj:b

Mr. **Florio**. There have even been allegations that the Justice Department is improperly meeting with industry representatives. The sole issue for the Justice Department to decide is whether it is going to handle the case for the Consumer Product Safety Commission; not whether the Consumer Product Safety Commission's decision to take some action is meritorious or not. If Justice is not going to handle it, then we are going to have to see what actions should be taken in the face of the recommendation by the Consumer Product Safety Commission.

Quite frankly, this puts into question the autonomy and the independence of the Consumer Product Safety Commission. If they have enforcement authority and they are not with the resources to enforce their responsibilities and have to therefore depend upon the whim or the decision of the Justice Department as to whether enforcement will take place, it may very well be able to be argued that the whole concept of an independent commission is in a sense almost a mockery.

It is important also to realize that the Consumer Product Safety Commission itself, through its task force, has criticized the efforts of the industry to develop a voluntary safety standard, and has described those efforts as wholly inadequate.

The question this subcommittee will be looking at is whether the commission, as a result of its almost exclusive reliance on voluntary standards to the virtual exclusion of regulatory action that the Commission would take, and as a result of significant budget cuts that the Commission has experienced over the last number of years, whether the Commission has implicitly encouraged industry or at best tolerated industry's inevitably coming forward with wholly inadequate standards. That is to say if the operation entails all carrots and no sticks, isn't it inevitable that we are not going to get vigorous enforcement, even in the context of voluntary standards?

Future hearings of this subcommittee will look into other aspects of the Commission's performance. We are specifically going to be having a hearing on the Bic performance evaluation, and we will be having hearings into other aspects of the Commission's record as well.

I suppose—and I will conclude on this point—that we are going to be looking into one particular suggestion that came from a media person who spent some time looking into the agency in some depth, who has suggested that the agency has become the biggest wimp agency in the Government.

Now that might be harsh; it might be inappropriate, but I think there is a substantial body of people who have developed who feel that the agency, for whatever reasons—it may very well be resources, it may be predisposition in terms of an ideological commitment to have less activism than some would require—but for whatever reason, there's question that the mandate of the agency has not been fulfilled. And I am looking forward to a series of hearings. We are looking forward to the cooperation of the Commission to this point. The commissioners and the staff have been extremely cooperative in providing to us information that we need in preparation for our series of hearings, and I am hopeful that we will be able to in a cooperative way make the legislative modifications, if necessary, to ensure that products put into the stream of commerce are safe.

This committee's major mandate, as I see it, is to deal with questions about competitiveness of our economy. Certainly one aspect of competitiveness is product quality and product safety and, therefore, the cluster of issues that this committee has—insurance, product liability, consumer product safety matters, consumer protection in general—all revolve around the concept of product quality and product safety. So I am hopeful that we will be in a position to make a contribution to the greater competitiveness of our economy, and that this Commission can play a role in ensuring that that is the case.

I would like at this point to recognize the gentleman from California, the distinguished ranking Minority member, Mr. Dannemeyer.

Mr. DANNEMEYER. Thank you, Mr. Chairman. I appreciate your having arranged for this hearing today. A constituent of mine has a casual interest in the subject. U.S. Suzuki happens to be located in the 39th Congressional District in Southern California, and rumor has it that they manufacture some of these ATV's, so I suspect they have a casual interest in what we are about.

I have a statement which I will put in the record. I don't intend to read it all, but one of the things that has puzzled me about the action of Consumer Product Safety Commission is the decision—or rather the recommendation they made to the Justice Department about setting up a refund program. I am interested in the evidence to be forthcoming in this hearing as to whether or not that action was justified, and the reason I make that statement is that injuries per 1000 vehicles in use, adjusted for exposure, show the following:

ATV's, 4.5 injuries per thousand vehicles in use.

Mini-trail bikes, 7.9 to 11.9 injuries per thousand vehicles in use.

Snowmobiles, 8.5 to 12.7 injuries per thousand vehicles in use.

Now if public policy dictates that in light of the injury record of ATV that we set up a refund program for them, then maybe the question arises whether we should ask the manufacturers of mini-trail bikes to set up a refund program for them, and snowmobiles, because they have higher injury rates.

I don't know what the injury rate is on surfboards being used by the young men and women off the Southern California coast, but I am aware that occasionally injuries occur with those uses, and perhaps it would be appropriate for us to consider asking the manufacturers of those surfboards to set up refunds if their injury rate is in excess of what it is for ATV's.

In any event, I look forward to the witnesses testifying this morning, and thank you for the opportunity of making this statement, Mr. Chairman.

[The opening statement of Hon. William Dannemeyer follows:]

OPENING STATEMENT OF HON. WILLIAM E. DANNEMEYER

Mr. Chairman, you are to be commended for scheduling this important hearing on the safety of All-Terrain Vehicles (ATV's). I am looking forward to hearing today's testimony which I hope will present a balanced view of the complicated issue of ATV safety. I have a strong interest in a balanced hearing not only because one of the manufacturers of ATV's, U.S. Suzuki, is headquartered in my Congressional District but because many consumers live in Southern California and use these vehicles on the beaches and in the desert. I note, with interest, that the industry and local dealer representative, as well as a representative from a national ATV user group are not scheduled to testify until the end of today's hearing. I would hope that the Chairman would commit himself to holding an additional hearing on this issue tomorrow should we run out of time to hear this important testimony today.

While we are to hear testimony on the safety of All-Terrain Vehicles today, there is another issue which must be addressed. The issue is the decision-making process of the Consumer Product Safety Commission (CPSC). The CPSC's commission structure has lead to: confusion by the industry as to what voluntary standards are desired by the CPSC; uncertainty as to the future of CPSC policy; CPSC recommendations not supported by its own reports; and the Commissioners preventing staff from doing important research. While the Commissioners will be able to respond to many of these important questions, I would hope that this issue will be addressed more fully during the upcoming reauthorization of the Consumer Product Safety Act.

All-Terrain Vehicles were first introduced in 1970. There are now about 2.5 million ATV's in use in the United States and 6.75 million riders. During the early 1980's, as ATV's became very popular, there was an increase in injuries and deaths associated with them. This trend of increased accidents accompanying a rapid rise in sales is typical of recreational products generally. Traditionally and logically, when a new product is introduced, accidents involving its use tend to be more frequent because operating experience is limited. But as time passes, the novelty wears off, the use of safety equipment increases, and various improvements are made, accident rates tend to decline. Certainly, that has been the case with automobiles, and the same holds true for skateboards as well. For instance, skateboard injuries rose from 4,000 in 1974 to 150,000 in 1977, only to decline to 38,000 in 1985. By comparison, ATV injuries have risen from 9,500 to 85,000 in their first 4 years of use and have now leveled off below the projected level. Only time will tell whether accidents will start to decline in the near future, as some have predicted. Since it is unavoidable that there is some risk of injury with motion related products (bicycles, ice and roller skates, skateboards, etc . . .), the question that we face today is whether ATV injuries are being caused by an inherent design defect or rider misuse.

The appropriate solution for a design defect is a ban, recall or refund of the hazardous project. While this solution directly addresses the problem of an inherent design defect, it would only affect the problem of product misuse if consumers are prevented from having access to the dangerous product. Since a ban, recall or refund is an extreme remedy in terms of cost and impact on consumers and industry, other available remedies are more appropriate in dealing with product misuse.

In evaluating any potential design defect, we must consider accident statistics for the ATV relative to other similarly used vehicles. These comparative statistics are vital to any determination as to whether or not ATV's present a greater risk of harm than other off-road vehicles. In fact a U.S. District Court recently dismissed a NHTSA suit against General Motors for recall of X-cars due to alleged rear brake lock-up because no evidence was presented to indicate that X-cars posed any greater risk of frequency of rear brake lock-up than any other cars. I am troubled by the fact that the CPSC seems to have been reluctant to incorporate such data into its analysis. I am interested in knowing why the CPSC Commissioners prevented staff from doing a "comparative exposure study" to put the number of injuries and deaths related to ATV's in perspective relative to other off-road vehicles.

Comparative figures would take into account some common factor which would make them comparable. This is absolutely necessary if comparisons are to be meaningful in any way. The comparative data which is available, adjusted for exposure, indicates that ATV's are no more dangerous than mini/trail bikes and snowmobiles. Injuries per 1,000 vehicles in use, adjusted for exposure, shows the following: ATV's—4.5 injuries per 1,000 vehicles in use; mini/trail bikes—7.9-11.9 injuries per 1,000 vehicles in use; and snowmobiles—8.5-12.7 injuries per 1,000 vehicles in use. While this data is revealing, it is by no means conclusive. Given this incompleteness of vital information, I find it incomprehensible that the CPSC could recommend an enforcement action to the Department of Justice seeking a court-imposed "refund" program. Since this action could cost the industry more than $1 billion and 38,000 U.S. jobs while not preventing any injuries, I believe that more substantive data is required before an extreme remedy can be recommended.

An issue which is often included under the "design defect" debate is the issue of child safety. Presumably, ATV's are unsafe for operation by any child under 12 years of the age. However, this assertion is not substantiated by the facts as a design defect. According the CPSC's own data, approximately 96 percent of all ATV-related injuries to children under 12 involve such children either riding as passengers or operating larger ATV's intended for older youths or adults. The CPSC staff has stated that there have been very few injuries to children under 12 on ATV's intended for their use. The CPSC's hazard analysis identified a total of only three accidents involving the 55,000 child-size ATV's in the United States. Compare these statistics with the number of accidents occurring on other motion-related children's products. According to the CPSC's data for calendar year 1985, the following estimated numbers of children under 15 were treated for injuries in hospital emergency rooms: bicycles (390,000); roller skates (46,000); sleds (24,000); and skateboards (25,000). Those who claim that ATV's were not "designed" for children because children's motor skills are not "developed" enough gloss over the fact that numerous children have successfully operated child-size ATV's without injury. This fact is especially true when considered in light of the accident statistics relating to other popular motion-related children's products.

The fact is that the existing data does not support the CPSC's recommendation for the refund of four-wheel ATV's purchased for children under 16 years of age and all three-wheel ATV's. There are some individuals who would like to ban child-size ATV's altogether under the belief that they are the most affected group. The above statistics show, however, that children can safely operate the appropriate sized ATV. If child-size ATV's are banned, then children will be forced to ride adult-size ATV's or none at all. Given the demand for this product, I am convinced that banning child-size ATV's would actually *increase* serious injuries and death among our nation's youth. Since the above data does not support the notion that ATV's have been defectively designed, we must address the problem of rider misuse.

The appropriate remedy for rider misuse is an effective education campaign focused on warnings, labelling and training. In fact, the industry has been developing voluntary standards, which include these remedies. The CPSC's ATV Task Force Report contained a finding that an ATV operator is 13 times more likely than the average rider to suffer an accident during the first month he or she rides. To me, that suggests increased rider training is as essential to the success of an ATV safety effort as comparative data is to a realistic evaluation of the risks associated with riding an ATV. The need to swiftly implement an effective education effort is clear. Rider misuse is a significant contribution to ATV-related injuries. The facts show that 30 percent of all fatal ATV accidents and 14 percent of all reported accidents involved alcohol consumption; 31 percent of all ATV's involved in accidents were carrying passengers; almost 30 percent of all accidents involved excessive speed; almost 10 percent of those injured were operating an ATV on paved roads; 70 percent of those injured in ATV related accidents were not wearing a helmet and, as stated earlier, a whopping 96 percent of all ATV-related injuries to children under 12 involve such children either riding as passengers or operating larger ATV's intended for older youths or adults. These figures clearly suggest that the responsibility for promoting ATV safety does not rest solely with either the CPSC or the industry. ATV users, especially parents, must take greater responsibility for ensuring their own safety, as well as the safety of others.

Rather than suggesting a total ban, recall or refund, the available statistics indicate that the CPSC should focus on an effective education effort as well as State legislation to require the use of helmets, prohibit passengers, prohibit the use of alcohol, prohibit riding on public roads and require operators to be certified after taking a skills test. These two efforts would address the problems that we know about, without curbing the availability of this product to consumers and without eliminating numerous U.S. jobs. The fact that the CPSC has chosen to recommend more stringent action based on incomplete data as opposed to fully supporting an effort which will we know will produce results, leads me to question the efficacy of the current CPSC structure. I would hope that the CPSC would make more of a commitment to work with industry in developing voluntary standards, training programs, and model legislation rather than promoting devisive litigation which can serve no useful purpose.

In raising these points, I do not wish to leave the impression that no further action needs to be taken to promote ATV safety or that a combination of rider education toll. To reach such a conclusion would be premature at this point; additional data or analysis may indicate that more needs to be done. On the other hand, I would caution against a precipitous rush to judgment on ATV's that might unnecessarily curtail the enjoyment or utility of millions of Americans who derive use from these vehicles. That too could be counterproductive as well as disillusioning. What is needed, and what I hope this hearing will stimulate, is a balanced approach to the problem of ATV safety, one that reflects reality, respects liberty, and produces positive results. Is that not too much to ask?

Mr. FLORIO. Thank you very much.

We are pleased to have as our first witness our colleague from Idaho, Congressman Craig. We would ask if you would come forward.

What we are going to do, with your concurrence, is have a 2-minute piece of the "60 Minutes" television program that was put on. This piece, without the editorial comments of the program, entails the mechanics. I want to, quite frankly, see what this looks like, and apparently this little piece shows the operation of these types of vehicles.

[Film shown.]

Mr. **Florio**. OK. Thank you. If someone could put the lights on, I'd appreciate it.

Congressman, we are pleased to—I know that you are a member of Mr. Barnard's subcommittee, and we appreciate your participation today.

STATEMENT OF HON. LARRY E. CRAIG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. **Craig**. Thank you very much, Mr. Chairman. I appreciate the opportunity to testify before your subcommittee this morning on an issue that I think is critically important; not just for the industry or for the consumer, but for this Government and this Congress. This subcommittee is to review and to determine whether the Federal Government should be involved in the kinds of actions that are currently underway by the Consumer Product Safety Commission.

I would also like to recognize my colleague from California, Mr. Dannemeyer.

Mr. Chairman, before I go into my written testimony, let me explain. My State of Idaho has no ATV manufacturer in it. My State of Idaho does, though, have thousands of consumers who ride these vehicles on a daily basis when the condition and the weather and the time of year allow.

As a result, I have had considerable interest in the issue, since it first became "popularized" by one Commissioner of the Consumer Product Safety Commission, and as that process began with the CPSC. I will tell you that I, along with other colleagues, filed dissenting views against my Chairman and the Majority Members of Government Operations and my Subcommittee that Congressman Barnard is the chairman of, and I think in my testimony today it will be clear why we did so and why I believe that current action is in part improperly taken by our Government.

I thank you for allowing me to offer a few comments, and hopefully some perspective, as to the Federal Government's examination of the safety aspects of all-terrain vehicles. I have watched this issue develop, as I mentioned, Mr. Chairman, over the past 2 years, since the Government Operations Subcommittee, of which I am a member, first heard from the Consumer Product Safety Commission.

Although I respect the Commission's good intentions, I continue to question its findings and its conclusions. I also continue to believe that to ban, recall or regulate ATV's without justifiable evidence can only be construed as subjective regulation, and improperly placed Government intervention.

With the permission of the Chairman, I would like to include in the record the November 1986 GAO Report prepared in response to an inquiry made by Hon. Henry Waxman, chairman of the Subcommittee on Health and the Environment. This report questions the validity of the CPSC's position that poses ATV's as a greater hazard to consumers than mini-bikes and snowmobiles.[1]

A later June 13, 1986 memorandum prepared by the Consumer Product Safety Commission staff shed new light on the issue by comparing injuries of ATV's, mini-bikes and snowmobiles, as my colleague from California mentioned in his opening testimony.

While the earlier CPSC claim stated that ATV's posed a greater consumer hazard than other recreational vehicles, the GAO Report discredits the notion with the memorandum that was revealed later, and I think that my colleagues probably have this GAO Report in hand, and I do believe, Mr. Chairman, this report is critical to a fair and balanced record of this committee.

I would like to quote from the report:

"The associate executive director told us that in mid-1984, CPSC staff provided to the commissioners a hazard analysis presenting ATV injury data, along with that of other recreational vehicles." This earlier data did not take into account the usage patterns for the three vehicles because, according to the associate director, the analysis used 'crude' figures as the intent was not to show definitive comparisons. Industry officials, he said, complained that the analysis was misleading, since the data were not weighed for vehicle use patterns and the media and others erroneously interpreted the data as indicating ATV's were more hazardous than other types of vehicles.

While no one disputes the value of ATV's to farmers and ranchers and others who use them in the course of their business, it is helpful to place the recreational use of ATV's in the proper context. The risk of injury with motion-related products is unavoidable because people use them in ways that test the limits of their capabilities and in ways that lead to unforeseen circumstances.

I guess what I am saying, Mr. Chairman, is that any motion-related vehicle, by the very nature of its use, cannot be made perfectly safe.

For example, CPSC estimates that last year there were 581,784 injuries related to bicycles, but this committee will not investigate that.

94,846 injuries related to ice skates and roller skates. But this committee will probably not investigate that, either, and for the obvious reasons.

And 37,326 injuries related to skateboards.

I would like to only add, Mr. Chairman, that just last weekend as I was driving into the driveway of my home in Boise, the neighbor boy, 12 years old, went screaming in front of me on his skateboard, because he didn't see me. If I had not reacted quickly and properly,

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[1] The November 1986 GAO Report referred to may be found in the subcommittee file. GAO/HRD-87-7.

I could have bumped him, possibly run over him and knocked him off the skateboard.

It also estimates there were approximately 86,400 injuries associated with ATV's. Despite the seemingly alarming numbers, these statistics provide no basis to assume the accidents were caused by or reflect defects in the product itself.

To my knowledge, the CPSC has been unable to identify any ATV design defect or flaw.

In June 1986, the Government Operations Committee reviewed the preliminary CPSC information and at that time a majority were led to believe that when compared to snowmobiles and minibikes, ATV's posed a greater risk.

As a result of that, and as you mentioned, Mr. Chairman, a majority of the Government Operations Committee come forth believing that ATV's posed greater risk that minibikes and snowmobiles. However, believing this information to be sketchy and the methodology to be unscientific, a significant number of the members joined me in opposing the Full Committee's efforts and reports on ATV's.

When the entire ATV industry objected to the misleading and inaccurate Commission comparison, commissioners responded not by following up, Mr. Chairman, but by criticizing members of its own staff who had questioned the validity of the Commission's initial findings.

Mr. Chairman, in conjunction with the GAO report, to which I have previously referred, I urged the Commission on November 19, 1986 to conduct a realistic exposure survey on ATV's and other recreational vehicles to determine their relative use and their accident rate. For example, we all know that it does not snow 12 months a year in New Jersey or even in Idaho. A snow mobile isn't ridden as much as an ATV, which can be used in most areas year round.

Like the CPSC staffer findings in reference to the comparative analysis, factors such as these must and should be taken into consideration. The need for this comparison with other recreational vehicles was apparent to the Commission in their very own May 1985 advanced notice proposal of proposed rulemaking or an ANPR, Mr. Chairman. Its lawyers even argued at one point that such data was essential to successfully prosecute a section 12 Imminent Hazard case.

Let's put my view and the Commission's view of the need for comparative analysis aside and turn to a neutral third party, Mr. Chairman, in the assessment of this, I think, very important question. The reason I say it is important, Mr. Chairman, is because you spoke in your opening statement of the need for action to be taken, of the need for decisive, comprehensive movement which you believed the Commission has failed to take. Let me tell you why I make this point.

On April 14, 1987 in the matter of the *United States of America* v *GM Corporation*, Judge Thomas Penfield Jackson of the U.S. District Court of the District of Columbia threw the National Highway Transportation Safety Administration case out of Court, in its effort to recall—and we all remember—the famous GM X-car. Judge Jackson cited that the Highway Safety Transportation Administration and GM's own data showed that when incidents for 1980 GM X-cars, peer cars and all other cars made in 1980 were compared, the X-car was no more hazardous than any other vehicle. Therefore, just as in the GM case, and I repeat, I believe that just as in the GM case, ATV manufacturers need to be directed through industry regulation and not by discrimination.

I ask that the entire opinion of Judge Jackson be inserted into the record because I think it makes clear that anyone researching this issue, if they fail to make proper comparative studies, to compare and relate instead of singling out as ATV's have been in this instance, that no matter what action taken, you can ultimately fail in court, Mr. Chairman, members of the committee, because you didn't do your homework.

The good judge used plain common sense to see how those products that the Government wanted to recall shaped against similar vehicles as far as safety records were concerned. I suggest, Mr. Chairman, that another Federal judge at another time will reach the same conclusion as Judge Jackson did on ATV's.

Many of my colleagues on the Government Operations Committee, and I am pleased to say, and I predicted this last June. Let's not have the Department of Justice, the taxpayers and the industry itself go through years in Federal Court as did GM with no one benefiting but Government and industry lawyers, while the consumer, who we all purport to represent, gets no safety improvement whatsoever.

Because it makes so little sense, I am compelled to comment on the enforcement action which the Commission has voted by a 2 to 1 majority. The vote to declare ATV's an imminent hazard and to, in effect, recall most of those in the market cannot be justified based on the Commission's, I repeat, based on the Commission's own record. By ignoring its own record and good plain common sense, it has voted a massive Government intervention in the name of safety, which will in fact lead, in my opinion, Mr. Chairman, to less safety.

Commissioners Graham and Dawson have proposed to refund, and let me suggest a refund which I believe really recalls, ATV's which will cost tens of millions of dollars and, based on CPSC's own data, will likely lead to increased deaths and injuries. The action takes ATV's from experienced riders and makes them available on the used market mostly to the young, inexperienced riders, who are at greater risk than the original owners. Their proposal makes no sense, Mr. Chairman.

If you pull from the market and then put back on the market, used, less expensive machines, it opens that market to a broader group of those who can afford for less money. Instead of erroneous action, what is needed are standards to provide safety information and training for riders. Beyond this, in my opinion, the Government should not go any further. We cannot protect people from themselves.

For example, and I think the reports have been given, the CPSC's own reports show that 30 percent of all ATV accidents are related to alcohol. Can we demand that people don't drink when they drive? We try to do it, yet 80 percent of all car accidents, Mr. Chairman, are related to alcohol, at least in my State. Of all ATV accidents 31 percent involved were carrying passengers and every booklet, every pamphlet, every tag on an ATV says "ride this with no passenger," or "no passenger allowed." It is a prohibited practice, Mr. Chairman. Yet, the consuming public goes ahead and does it.

Nearly 10 percent of the injured were operating ATV's on paved roads and that's prohibited, it's prohibited in many States and certainly prohibited because it is a nonlicensed vehicle for off road use only.

In conclusion, I'd like to say, Mr. Chairman, that the industry has continued to work diligently on voluntary standards for ATV's. Thus far, it has developed the first phase of voluntary standards which include age labeling, warning labeling and other provisions. The Consumer Product Safety Commission staff states that it is pleased with this progress and the industry is already meeting the requirements of an earlier Phase I version pending completion of formal standards.

The CPSC staff recently began participating with the industry in the second phase of the voluntary standards involving engineering issues. Further voluntary standards meetings are scheduled soon and this aspect seems to be well on track.

Mr. Chairman, I would like to say this is where the CPSC should be, in moving and pushing this industry towards safer standards, towards training and education, and the proper notification of the consumer. That way, the old adage "consumer beware" can adequately be placed against this product if they are properly informed and offered the proper education and training.

The industry will continue its extensive information and educational efforts to help increase awareness of the need for operator ATV safety. The industry has long been committed to these efforts. It has made training courses available for all purchasers who wish to take them and it has provided video tapes and written instructions regarding safe operation of ATV's.

I am confident, Mr. Chairman, that together the Congress, the Commission and the industry and the American public can solve their own problems and we can do without unnecessary efforts to regulate in a sledge hammer approach to an industry and a product of an industry that I don't think is deserving.

Mr. Chairman, I will conclude at this point but I have other inserts that I would like for the record, but let me read what a standard sticker on an ATV reads. This is what the consumer sees when he purchases it.

"Serious injury or damage may result if you ignore any of the following." I suggest this is true of an automobile, and we are not willing to ban automobiles, and all other types of motion vehicles.

"This ATV is recommended for children 14 years or older," and yet it is that age group and below where the highest injuries result because mommy and daddy see this great big doughnut-tired tricycle, and they put their children on it and they send them riding off across the country side with no training or experience thinking it's safe. Yet the industry itself says don't do it, but mommy and daddy don't really care—out of sight, out of mind.

I would suggest, Mr. Chairman, that the responsibility of the deaths of young children on ATV's is not a fault of the industry, but it is the fault of the parents of America who simply do not take the time to train their young people or keep them off these large machines that are not designed for youthful transportation.

The little mini three wheeler ATV shows a considerable drop in childhood injury by those who ride it because it is designed for children. It is safe. It is light. But it will cause injury just as much as a skateboard or a bicycle or a tricycle or any other toy that a parent may buy for his or her child and assume that without any kind of education or training, the children can in fact use training.

"Adult supervision and instruction required when children operate vehicles." Glued right to the vehicle itself, Mr. Chairman. "The vehicle is for off road use only. Operation on paved surfaces can cause loss of control." "Always wear a helmet and eye protection."

We have helmet laws in a variety of our States and in some States, we have no helmet laws. We all know the statistics of motorcycles and bicycles and tricycles. When you wear the helmet, a tremendous lesser amount of head injuries results accordingly.

Mr. Chairman, I can go on and on.

Mr. **Florio**. We would appreciate it if you would not.

Mr. **Craig**. What I am telling you isn't fun, isn't exciting, isn't bloody. It is no buzz, makes no appeal politically, but it does address the very important issue of with whom operator safety rests. That's the truth, that's the facts, and the statistics. I say when we do our homework in this Congress, we ought to get away from the theatrics and get on with the business at hand.

I would suggest that when we identify all of the information available, then there will be no theatrics because the facts will show that under the current information—if this goes to Court—and more than likely based on past court experiences, the judges will throw it out because somebody didn't do their homework.

It's interesting that once 60 Minutes of CBS decides to dramatize this issue, that all of a sudden it becomes another important issue. Maybe that's why it's popular once again. I would suggest that if you look at what 60 Minutes did but more importantly, you look at what they didn't do, you look at what they told the industry and then refused to respond to, is it fair, Mr. Chairman, when you question the industry and then you take it to those who are not opposed to ATV's and say, here's what the industry said, what's your reaction and then you don't go back to the industry for a response, that's unfair. That's what CBS did. CBS, in my opinion, took information that was available in a narrow scope and in a narrow window and failed to show the total picture. But then again, was it in their interest? No, because it wouldn't have had pizzazz, it simply would not have been as sexy as the kind of program they tried to promote.

Mr. **Florio**. Let us ask if you could conclude.

Mr. **Craig**. All right. We will conclude with this statement.

I'm not sure that the clip—the clip from 60 Minutes you showed was a young gentleman by the name of Randy Nelson who was a motorcycle expert who testified against the ATV industry in lawsuits and was in the film, but I assume you were not aware that at a recent hearing in San Diego, Nelson's testimony was disqualified and thrown out of court. The expert in this case, the 60 Minute expert, was reportedly an engineering school dropout. His video tape demonstrations have also been disqualified by independent engineers and experts simply because they conclude he doesn't know what he is talking about.

Thank you very much, Mr. Chairman and members of this committee. I really believe it is important that all committees know what they are getting into when they head into this issue. There is a phenomenal amount of facts out on this issue, and I think I am attempting to show what has been left out of the overall proceedings and the processes to date.

Thank you, Mr. Chairman, for your time and your indulgence. It is a technical question and there is a great deal to it that should be in the record.

[The prepared statement of Mr. Craig with attachment follow:]

TESTIMONY OF THE HONORABLE LARRY CRAIG
BEFORE THE SUBCOMMITTEE ON
COMMERCE, CONSUMER PROTECTION AND COMPETITIVENESS
MAY 12, 1987

MR. CHAIRMAN, THANK YOU FOR ALLOWING ME TO OFFER A FEW COMMENTS AND HOPEFULLY SOME PERSPECTIVE ON THE FEDERAL GOVERNMENT'S EXAMINATION OF THE SAFETY ASPECTS OF ALL-TERRAIN VEHICLES. I HAVE WATCHED THIS ISSUE DEVELOP THESE PAST TWO YEARS SINCE THE GOVERNMENT OPERATIONS SUBCOMMITTEE ON COMMERCE, CONSUMER AND MONETARY AFFAIRS, ON WHICH I SERVE, FIRST HEARD FROM THE CONSUMER PRODUCT SAFETY COMMISSION. ALTHOUGH I RESPECT THE COMMISSION'S GOOD INTENTIONS, I CONTINUE TO QUESTION ITS FINDINGS AND CONCLUSIONS. I ALSO CONTINUE TO BELIEVE THAT TO BAN, RECALL, OR REGULATE ATVS WITHOUT JUSTIFIABLE EVIDENCE CAN ONLY BE CONSTRUED AS SUBJECTIVE REGULATION.

WITH THE PERMISSION OF THE CHAIRMAN, I WOULD LIKE TO INCLUDE IN THE RECORD A NOVEMBER 1986 GAO REPORT PREPARED IN RESPONSE TO AN INQUIRY MADE BY THE HONORABLE HENRY A. WAXMAN, CHAIRMAN OF THE SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT OF THE HOUSE COMMITTEE ON ENERGY AND COMMERECE. THE REPORT QUESTIONS THE VALIDITY OF THE CPSC'S POSITION THAT POSED ATVS AS A GREATER HAZARD TO CONSUMERS THAN MINIBIKES AND SNOWMOBILES. A LATER JUNE 13, 1986 MEMORANDUM PREPARED BY CPSC STAFF SHED NEW LIGHT ON THIS ISSUE BY COMPARING INJURY FOR ATVS, MINIBIKES, AND SNOWMOBILES.

WHILE THE EARLIER CPSC CLAIM STATED THAT ATVS POSED A GREATER CONSUMER HAZARD THAN OTHER RECREATIONAL VEHICLES, THE GAO REPORT DISCREDITS THIS NOTION WITH THE MEMORANDUM THAT WAS REVEALED LATER.

I QUOTE FROM THE REPORT:

"THE ASSOCIATE EXECUTIVE DIRECTOR TOLD US THAT IN MID-1984, CPSC STAFF PROVIDED TO THE COMMISSIONERS A HAZARD ANALYSIS PRESENTING ATV INJURY DATA ALONG WITH (THAT OF) OTHER RECREATIONAL VEHICLES. . . . (THIS DATA) DID NOT TAKE INTO ACCOUNT THE USAGE PATTERNS FOR THE THREE VEHICLES BECAUSE, ACCORDING TO THE ASSOCIATE EXECUTIVE DIRECTOR, THE ANALYSIS USED 'CRUDE' FIGURES AS THE INTENT WAS NOT TO SHOW DEFINITIVE COMPARISONS. INDUSTRY OFFICIALS, HE SAID, COMPLAINED THAT THE ANALYSIS WAS MISLEADING SINCE THE DATA WERE NOT WEIGHTED FOR VEHICLE USAGE PATTERNS, AND THE MEDIA AND OTHERS ERRONEOUSLY INTERPRETED THE DATA AS INDICATING ATVS WERE MORE HAZARDOUS THAN THE OTHER TWO TYPES OF VEHICLES."

WHILE NO ONE DISPUTES THE VALUE OF ATVS TO FARMERS, RANCHERS AND OTHERS, IT IS HELPFUL TO PLACE THE RECREATIONAL USE OF ATVS IN ITS PROPER CONTEXT. THE RISK OF INJURY WITH MOTION-RELATED PRODUCTS IS UNAVOIDABLE BECAUSE PEOPLE USE THEM IN WAYS THAT TEST THE LIMITS OF THEIR OWN CAPABILITIES AND IN WAYS THAT LEAD TO UNFORESEEN CIRCUMSTANCES. FOR EXAMPLE, CPSC ESTIMATES THAT LAST YEAR THERE WERE 581,784 INJURIES RELATED TO BICYCLES, 94,846 INJURIES RELATED TO ICE SKATES AND ROLLER SKATES, AND 37,326 INJURIES RELATED TO SKATEBOARDS. IT ALSO ESTIMATES THERE WERE APPROXIMATELY 86,400 INJURIES ASSOCIATED WITH ATVS. DESPITE THE SEEMINGLY ALARMING NUMBERS, THESE STATISTICS PROVIDE NO BASIS TO ASSUME THE ACCIDENTS WERE CAUSED BY, OR REFLECT DEFECTS IN, THE PRODUCT.

TO MY KNOWLEDGE, THE CPSC HAS BEEN UNABLE TO IDENTIFY ANY ATV DESIGN DEFECT OR FLAW.

IN JUNE 1986 THE GOVERNMENT OPERATIONS COMMITTEE REVIEWED THE PRELIMINARY CPSC INFORMATION, AND AT THE TIME, A MAJORITY WERE LED TO BELIEVE THAT, WHEN COMPARED TO SNOWMOBILES AND MINIBIKES, ATVS POSED GREATER RISK. BELIEVING THIS INFORMATION TO BE SKETCHY AND THE METHODOLOGY TO BE UNSCIENTIFIC, HOWEVER, A SIGNIFICANT NUMBER OF MEMBERS JOINED ME IN OPPOSING THE FULL COMMITTEE'S REPORT ON ATVS.

WHEN THE ENTIRE ATV INDUSTRY OBJECTED TO THE MISLEADING AND INACCURATE COMMISSION COMPARISON, COMMISSIONERS RESPONDED NOT BY FOLLOWING UP, BUT BY CRITICIZING MEMBERS OF ITS OWN STAFF WHO HAD QUESTIONED THE VALIDITY OF THE COMMISSION'S INITIAL FINDINGS.

MR. CHAIRMAN, IN CONJUNCTION WITH THE GAO REPORT TO WHICH I HAVE PREVIOUSLY REFERRED, I URGED THE COMMISSION ON NOVEMBER 19, 1966 TO CONDUCT A REALISTIC EXPOSURE SURVEY OF ATVS AND OTHER RECREATIONAL VEHICLES TO DETERMINE THEIR RELATIVE USE, AND ACCIDENT RATES.

FOR EXAMPLE, WE ALL KNOW IT DOESN'T SNOW 12 MONTHS OF THE YEAR IN NEW JERSEY OR EVEN IDAHO, SO A SNOWMOBILE ISN'T RIDDEN AS MUCH AS AN ATV, WHICH CAN BE USED YEAR-ROUND. LIKE THE CPSC STAFFERS' FINDINGS IN REFERENCE TO THE COMPARATIVE ANALYSIS, FACTORS SUCH AS THESE MUST BE TAKEN INTO CONSIDERATION.

THE NEED FOR THIS COMPARISON WITH OTHER RECREATIONAL VEHICLES WAS APPARENT TO THE COMMISSION IN THEIR VERY OWN MAY 1985 ANPR, AND ITS LAWYERS EVEN ARGUED AT ONE POINT THAT SUCH DATA WAS ESSENTIAL TO SUCCESSFULLY PROSECUTE A SECTION 12 IMMINENT HAZARD CASE.

BUT LET'S PUT MY VIEW AND THE COMMISSION'S VIEW OF THE NEED FOR COMPARATIVE DATA ASIDE, AND TURN TO A NEUTRAL THIRD PARTY'S ASSESSMENT OF THIS QUESTION.

ON APRIL 14, 1987 IN THE MATTER OF THE UNITED STATES OF AMERICA VS GM CORPORATION, JUDGE THOMAS PENFIELD JACKSON OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA THREW THE U.S. NATIONAL

HIGHWAY TRANSPORTATION SAFETY ADMINISTRATION OUT OF COURT IN ITS EFFORT TO RECALL THE GM X CAR. JUDGE JACKSON CITED THAT NHTSA AND GM'S OWN DATA SHOWED THAT WHEN INCIDENTS FOR 1980 GM X CARS, "PEER CARS" AND ALL OTHER CARS MADE IN 1980 WERE COMPARED, THE X CAR WAS NO MORE HAZARDOUS THAN ANY OTHER VEHICLE. THEREFORE, JUST AS IN THE GM CASE, ATV MANUFACTURERS NEED TO BE DIRECTED THROUGH INDUSTRY REGULATION AND NOT BY DISCRIMINATION. I ASK THAT THE ENTIRE OPINION OF JUDGE JACKSON BE INSERTED INTO THE RECORD.

THE GOOD JUDGE USED PLAIN COMMON SENSE TO SEE HOW THOSE PRODUCTS THE GOVERNMENT WANTED RECALLED SHAPED AGAINST SIMILAR VEHICLES AS FAR AS SAFETY RECORDS WERE CONCERNED. I SUGGEST, MR. CHAIRMAN, THAT ANOTHER FEDERAL JUDGE, AT ANOTHER TIME, WILL REACH THE SAME CONCLUSION THAT JUDGE JACKSON DID, ON ATVS. MANY OF MY COLLEAGUES ON THE GOVERNMENT OPERATIONS COMMITTEE, I AM PLEASED TO SAY, PREDICTED THIS LAST JUNE.

LET'S NOT HAVE THE DEPARTMENT OF JUSTICE, THE TAXPAYERS AND THE INDUSTRY ITSELF GO THROUGH YEARS IN THE FEDERAL COURTS, AS DID GM, WITH NO ONE BENEFITING BUT GOVERNMENT AND INDUSTRY LAWYERS, WHILE THE CONSUMER, WHOM WE ALL PURPORT TO REPRESENT, GETS NO SAFETY IMPROVEMENT AT ALL.

BECAUSE IT MAKES SO LITTLE SENSE, I AM COMPELLED TO COMMENT ON THE ENFORCEMENT ACTION WHICH THE COMMISSION HAS VOTED BY A 2-1 MAJORITY. THE VOTE TO DECLARE ATVS AN IMMINENT HAZARD AND TO, IN EFFECT, RECALL MOST OF THOSE IN THE MARKET CANNOT BE JUSTIFIED BASED ON THE COMMISSION'S OWN RECORD.

BY IGNORING ITS OWN RECORD AND PLAIN COMMON SENSE, IT HAS VOTED A MASSIVE GOVERNMENT INTERVENTION IN THE NAME OF SAFETY WHICH WILL, IN FACT, LEAD TO LESS SAFETY. COMMISSIONERS GRAHAM AND DAWSON HAVE PROPOSED TWO REFUNDS, REALLY RECALLS, OF ATVS WHICH WILL COST TENS OF MILLIONS OF DOLLARS AND, BASED ON CPSC DATA, WILL LIKELY LEAD TO INCREASED DEATHS AND INJURIES. THE ACTION TAKES ATVS FROM EXPERIENCED RIDERS AND MAKES THEM AVAILABLE ON THE USED MARKET, MOSTLY TO YOUNG, INEXPERIENCED RIDERS WHO ARE AT GREATER RISK THAN THE ORIGINAL OWNERS!

INSTEAD OF ERRONEOUS ACTION, WHAT IS NEEDED ARE STANDARDS TO PROVIDE SAFETY INFORMATION AND TRAINING FOR RIDERS. BEYOND THIS, GOVERNMENT SHOULD NOT GO. WE CANNOT PROTECT PEOPLE FROM THEMSELVES. FOR EXAMPLE, ACCORDING TO THE CPSC REPORT:

--30% OF ALL FATAL ATV ACCIDENTS INVOLVED ALCOHOL

--31% OF ALL ATV ACCIDENTS INVOLVED CARRYING PASSENGERS, A PROHIBITED PRACTICE

--NEARLY 10% OF THE INJURED WERE OPERATING ATVS ON PAVED ROADS, ANOTHER PROHIBITED PRACTICE.

IN CONCLUSION, I WOULD LIKE TO SAY THAT THE INDUSTRY HAS CONTINUED TO WORK DILIGENTLY ON VOLUNTARY STANDARDS FOR ATVS. THUS FAR, IT HAS DEVELOPED THE FIRST PHASE OF THE VOLUNTARY STANDARDS, WHICH INCLUDE AGE-LABELLING, WARNING LABELLING AND OTHER PROVISIONS. THE CONSUMER PRODUCT SAFETY COMMISSION STAFF STATES IT IS PLEASED WITH THIS PROGRESS, AND THE INDUSTRY IS ALREADY MEETING THE REQUIREMENTS OF AN EARLIER PHASE ONE VERSION, PENDING COMPLETION OF THE FORMAL STANDARDS

APPROVAL PROCESS. THE CPSC STAFF RECENTLY BEGAN PARTICIPATING WITH THE INDUSTRY ON THE SECOND PHASE OF THE VOLUNTARY STANDARD, INVOLVING ENGINEERING ISSUES. FURTHER VOLUNTARY STANDARDS MEETINGS ARE SCHEDULED SOON AND THIS ASPECT SEEMS TO BE WELL ON TRACK.

THE INDUSTRY WILL CONTINUE ITS EXTENSIVE INFORMATION AND EDUCATION EFFORTS TO HELP INCREASE AWARENESS OF THE NEED TO OPERATE ATVS SAFELY. THE INDUSTRY HAS LONG BEEN COMMITTED TO THESE EFFORTS. IT HAS MADE TRAINING COURSES AVAILABLE FOR ALL PURCHASERS WHO WISH TO TAKE THEM. AND IT HAS PRODUCED VIDEO TAPES AND WRITTEN INSTRUCTIONS REGARDING SAFE OPERATION OF ATVS.

I AM CONFIDENT THAT, TOGETHER, THE CONGRESS, THE COMMISSION, THE INDUSTRY AND THE AMERICAN PUBLIC CAN SOLVE THESE PROBLEMS. AND WE CAN DO SO WITHOUT UNNECESSARY CONGRESSIONAL OVERSIGHT OR REGULATORY SLEDGE HAMMERS.

THANK YOU.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action No. 83-2220
)
GENERAL MOTORS CORPORATION,)
)
Defendant.)

FILED

APR 14 1987

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

DECISION AND ORDER

The United States brings this action pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. No. 89-563, 80 Stat. 718 (codified as amended at 15 U.S.C. § 1381 *et seq.* (1982 and Supp. III 1985) (the "Act"), at the instance of the National Highway Traffic Safety Administration ("NHTSA"), U.S. Department of Transportation, against defendant General Motors Corporation ("GM"), a motor vehicle manufacturer. The complaint alleges that an entire generation of GM automobiles, its 1980 X-cars, are defective in that they are predisposed to a phenomenon known as "premature rear wheel lock-up" entailing a potential for loss of vehicle control.[1] Counts I and II allege, respectively, that GM determined (or should have determined), pre-production, that certain components of the X-cars' rear braking system were responsible for the condition, and that, post-production, it learned that deterioration of front braking components in service were exacerbating it, but in each instance it failed in its statutory duties to notify the Secretary of Transportation and the cars' owners of, and to remedy, the "defect." Counts III and IV allege that the two recalls of some X-cars which GM did conduct in 1981 and 1983, at NHTSA's urging, were each inadequate to cure the defect. Count V alleges that GM failed to submit accurate and complete information in response to NHTSA's queries in the course of its administrative investigation of the 1980 X-cars. And Count VI charges a violation of a NHTSA regulation in GM's omission of NHTSA's "hotline" telephone number in the recall letters sent X-car owners in the 1981 recall campaign. The United States prays for a judgment declaring that GM committed the several violations alleged, an injunction directing it to recall and effectively repair all of its 1980 X-cars, and an order assessing civil monetary penalties against it.

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[1] GM introduced the 1980 X-car for public sale in April, 1979, selling approximately 1.1 million X-cars under trade names of the Chevrolet Citation, Pontiac Phoenix, Oldsmobile Omega, and Buick Skylark during the 1980 model year ending in September, 1980.

By its answer GM denies that its 1980 X-cars are, or have ever been, defective, and that it violated the Act or the regulation as alleged.[2]

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[2] The action was filed August 3, 1983. GM moved to dismiss the complaint. On October 31, 1983, the government filed a motion for a preliminary injunction. On December 1st the Court denied GM's motion to dismiss, 574 F. Supp. 1047 (D.D.C. 1983), and set

Trial commenced March 13, 1984, and continued, with intermittent recesses, until May 16, 1985, when the Court approved and filed a stipulation of the parties closing the evidentiary record.[3] Following post-trial briefing, closing arguments were heard on February 25, 1986, and the case submitted.

Upon the facts found as hereinafter set forth in accordance with Fed.R.Civ.P. 52(a), following trial without a jury, and the conclusions of law drawn therefrom, for the reasons stated the Court will enter judgment for defendant dismissing all counts of the complaint (except Count V) with prejudice.

I.

Enacted in 1966 "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents," 15 U.S.C. § 1381; see generally 1966 U.S. Code Cong. & Admin. News at

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hearing on the motion for a preliminary injunction for February 1, 1984. When the case was advanced for an early trial in March, 1984, the government withdrew its motion for a preliminary injunction.

Count V was severed for separate trial on February 6, 1984, on defendant's motion.

[3] Because the case was expedited to trial, discovery was allowed to continue simultaneously, being accomplished primarily during the recesses. Instead of the six weeks originally allotted, the trial eventually consumed 113 court days. Testimony was received from 33 trial witnesses, 20 of them experts. The trial record comprises over 16,000 pages of transcript and nearly 3,700 exhibits.

The Court commends counsel for both parties for their exceptional service to their clients and the Court throughout the proceedings.

2709, the Act imposes a duty upon automobile manufacturers to notify both NHTSA and the owners of their vehicles when they learn the vehicles possess safety-related defects, and then to remedy those defects without charge to the owners. 15 U.S.C. §§ 1411, 1414.[4] The term "defect" embraces "any defect in performance, construction, components, or materials in motor vehicles or motor vehicle equipment." 15 U.S.C. § 1391(11). *Prima facie* proof of a defect in a class of vehicles requires only a showing that a "significant" number of them have failed in consequence of the defect, a significant number being merely a

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[4] The manufacturer's self-start remedy provisions now found in § 1414 did not appear in the original 1966 Act but were added by the Motor Vehicle and Schoolbus Safety Amendments of 1974, Pub. L. 93-492 (Oct. 27, 1974).

Under the more familiar parallel provision of the Act, 15 U.S.C. § 1412, if the Secretary (i.e., NHTSA) determines that certain vehicles contain a defect relating to safety, then the Secretary may administratively order the manufacturer to take remedial action, and the Secretary's order is judicially enforceable under 15 U.S.C. § 1415. The Act vests the Secretary of Transportation with broad powers to conduct any investigation necessary to its enforcement. 15 U.S.C. § 1401(a)(1)(B). Vehicle manufacturers are required to maintain information, and to produce it upon request, in conjunction with an investigation. 15 U.S.C. § 1401(b). They may be asked for performance or technical data, and may be required to furnish written answers under oath. 15 U.S.C. § 1401. If an investigation develops evidence of a violation, the Secretary may refer the matter to the Attorney General who may bring an enforcement action in a United States District Court to recover civil penalties as well as to obtain appropriate injunctive relief. 15 U.S.C. §§ 1398, 1399, 1401. This Court has previously held, however, that an action brought by the United States under § 1411 may go forward in the absence of a final administrative order under § 1412. *United States* v. *General Motors Corp.*, 574 F. Supp. 1047, 1049 (D.D.C. 1983).

"non-de minimis" quantity; it need not be "a substantial percentage of the total." United States v. General Motors Corp., 518 F.2d 420, 438 & n.84 (D.C. Cir. 1975) ("Wheels"). Evidence of a non-de minimis number of defect-induced failures establishes a rebuttable presumption of the existence of a class-wide defect in the vehicles, and the burden of proof shifts to the manufacturer to rebut the government's prima facie showing. The manufacturer may also assert affirmative defenses, e.g., that the failures resulted from unforeseeable owner abuse or neglect of vehicle maintenance, id. at 427, 438, as to which, of course, the manufacturer has the burden of proof from the outset.

Under § 1411 the government must also show that the manufacturer not only knows of the supposed defect in its vehicles, but that it made a "good faith" determination that the defect relates to motor vehicle safety as well.[5] A defect is "related to motor vehicle safety" if it presents an "unreasonable risk of accidents." 15 U.S.C. § 1391(1). As in the matter of determining the existence of a vehicle "defect," Wheels, 518 F.2d at 435-36, so also is "commonsense" analysis to be employed in ascertaining what constitutes an unreasonable risk, United States v. General Motors Corp., 565 F.2d 754, 757 (D.C. Cir. 1977) ("Carburetors"), but, as a general proposition, any defect that involves a loss of control presumptively presents an unreasonable risk of accidents as a matter of law. United States v. General Motors Corp., 561 F.2d 923 (D.C. Cir. 1977) (per curiam) ("Pitman Arms"), cert. denied, 434 U.S. 1033 (1978).

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[5] This Court has also previously held that a manufacturer cannot evade its statutory obligations "by the expedient of declining . . . to reach its own conclusion as to the relationship between a defect in its vehicles and . . . safety." United States v. General Motors Corp., 574 F. Supp. at 1050. Thus, a manufacturer incurs its duties to notify and remedy whether it actually determined, or it should have determined, that its vehicles are defective and the defect is safety-related.

II.

Formal planning for what was to become GM's "1980 X-car" began in 1975.[6] The X-car was to be GM's first high-volume front-wheel-drive automobile with a transversely mounted engine to be sold as a "coordinated car line." Because an X-car model was to be offered by each of four of GM's car divisions, its design and development was coordinated through a "project center," established in early 1976, to which engineers from both car and component divisions were assigned. The project center was administratively a part of GM's corporate engineering staff, but all engineering decisions were, ultimately, the responsibility of the chief engineers of the several car divisions: Chevrolet, Pontiac, Oldsmobile, and Buick.

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[6] The term "X-car" has no significance other than as an internal designator adopted by GM for that particular car body.

Particular divisions were assigned lead responsibility for the evolution of specific vehicle systems. Thus the Buick division acquired overall lead responsibility for the X-car's braking system. Other divisions with expertise in particular brake components were given primary responsibility for those components: the Delco-Moraine division for the front brake caliper and linings, the rear brake drum, and the master cylinder; the Inland division for the rear brake linings for automatic transmission X-cars; and the Chevrolet division for the front hub and rotor assembly, all being coordinated in their efforts by Buick's brake engineers.

As is common practice in any GM car program, the brake engineers first selected the generic type of brake components and sized them based on projected vehicle mass.[7] Engineering drawings were made, from which prototype components were produced, tested in laboratories, and then tested on similarly sized peer cars (called "component" cars). As development progressed the evolving system was installed on various pre-production versions of the proposed X-car itself (called successively, "prototype," "pilot," and "lead unit build" cars). Test results were reviewed, and designs modified to improve performance as the tests indicated.

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[7] GM at all times contemplated that the 1980 X-cars would be equipped with front disc brakes and rear drum brakes, a combination common then and now on both GM and non-GM automobiles.

GM's divisional brake engineers evaluated the X-car's brake system in operation principally on four of the company's established driving "schedules": the "FMVSS-105 docket" tests, the Pike's Peak descent, a West Virginia mountain road course, and a city driving schedule in and about Los Angeles.[8] Other vehicle systems were simultaneously being tested, by the other groups of engineers primarily concerned with them, on the same schedules, and, of particular significance for this case, on one long-distance general durability test known as the "R15-23 schedule."

Having chosen the front disc/rear drum brake design for the X-car, GM brake engineers elected to use semi-metallic linings for the disc brakes, believing them to offer superior resistance to fade at the higher brake temperatures they expected to occur ier front end of the vehicle.[9] Organic linings were ployed on the rear drum brakes upon the supposition that ould be less susceptible to environmental degradation.

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[8] FMVSS-105 (see Part IV, infra, at 29-30) establishes the government's performance requirements with respect to stopping distance in the fully- and lightly-loaded conditions, fade and recovery, water recovery and parking brake grade-holding capacity. 49 C.F.R. § 571.105. The Pike's Peak test assesses the thermal capacity of a brake system by subjecting the vehicle to repeated brake applications during a steep mountain descent. The West Virginia mountain test permits an evaluation of fade, wear and general effectiveness over a 1,000-mile course through mountainous terrain. The Los Angeles city traffic test measures brake durability on a 5,000-mile urban schedule run through Los Angeles in consecutive eight-hour shifts of 200 miles each.

The 1980 X-car was also to be equipped with two "fixed-lope" proportioning valves in its hydraulic system (one valve per rear wheel) to limit the line pressure going to the rear brakes in moderate to heavy braking. The valves compensate for dynamic force transfer by "proportioning" rear line hydraulic pressure to incremental front line pressure above a certain "break," or "knee," point which, in the X-car, was set at 350 psi. (For example, a 41% "fixed-slope" proportioner valve allows, in theory, 41% of the amount of the incremental line pressure applied to the front brakes above the "break" to reach the rear brakes as well.) In harder brake applications, therefore, more line pressure would be directed to the front brakes relative to the rear to compensate for the dynamic transfer of normal force to the front.[10]

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[9] All similar brake systems convert the kinetic energy of the vehicle into thermal energy as the brake linings press against the rotating rotor or drum mounted on the wheel.

[10] GM engineers at the time preferred fixed-slope rear proportioning to a system without proportioning (as found on some contemporary competitive cars) and to systems employing "sensing" valves that vary the percentage of rear line pressure in relation to the height of the rear springs of the vehicle. The proportioning valve was then in common use in the United States.

Chevrolet initially proposed a 9.34-inch vented rotor for the front disc brake, but the Buick engineers, reviewing the design in March, 1976, tentatively concluded that a smaller rotor might not provide sufficient heat dissipation and gave consideration to two larger rotors: a 9.75-inch rotor in a new caliper design, and a 10-inch rotor in an existing design. After evaluating both rotors the engineers decided upon the 9.75-inch rotor upon the theory that its smaller mass would enhance fuel economy without compromising performance.

Semi-metallic linings, which were thought to offer several advantages over organic materials such as asbestos, e.g., increased fade resistance, superior high-speed effectiveness, and greater durability, were gaining favor throughout the automotive industry in the late 1970's. General Motors' brake engineers considered two semi-metallic materials for the front brakes of the 1980 X-car: the DM8032 material, which GM itself had recently developed as a successor to its own first semi-metallic lining, and the BX 7161A material, a Bendix product used on certain Ford and Chrysler vehicles. Its own tests led the GM engineers to conclude that the DM8032 offered equivalent or better performance in all parameters, and they selected it.

GM engineers also weighed two alternative rear drum brake configurations for the 1980 X-car. The "leading-trailing" system presses both brake shoes against the drum when hydraulic line pressure is applied without interaction between the shoes; the "duo-servo" system, ultimately chosen for the X-car, employs the rotating action of the drum to cause the forward, or "leading," shoe to apply additional force against the "trailing" shoe, theoretically supplying more output.

A decision in late 1977 to reroute the 1980 X-car's parking brake cable to distance it from the heat generated by the catalytic converter appeared to diminish the parking brake's mechanical efficiency, and the engineers abandoned the original plan to use 4050/4050 organic rear brake linings in favor of more "aggressive" 4035/4050 linings. Then, as the X-car program progressed through 1978, the projected weight of the vehicle increased somewhat, and the engineers grew apprehensive as to whether manual transmission X-cars would pass the federal parking brake test.[11] They therefore made a further change from the 4035/4050 to the still more aggressive Bendix 3198/3199 rear linings (also used on some Ford and Chrysler models) on the manual transmission X-cars.

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[11] FMVSS-105 required the parking brakes of manual transmission vehicles to hold on a 30% grade, in neutral gear, in both the forward and reverse directions. Automatic transmission vehicles needed only to hold on a 20% grade, having the additional protection of the "park" position of the transmission. 49 C.F.R. § 571.105. (With both the transmission in "park" and the parking brake engaged, automatic transmission vehicles must hold on a 30% grade.)

GM engineers were generally satisfied with the X-car brake system they had settled upon. Pilot and lead unit build cars passed FMVSS-105 certification tests using either the 3198/3199 or the 4035/4050 rear lining combinations, and the system achieved what GM engineers considered to be acceptable ratings on the Pike's Peak schedule for effectiveness, wear, temperature behavior, and overall performance. Of several different brake configurations tested on the West Virginia mountain schedule, an initial production configuration, using 4035/4050 rear linings and a 41% proportioning valve, received highest ratings overall for brake balance and effectiveness. The engineers were also generally content with the Los Angeles brake durability test results, although on some of the runs on the L.A. schedule drivers had submitted reports of incidents of "rear wheel (or brake) lockups."[12]

In the latter half of 1978, a Durability Test and Development ("DT&D") group of GM's corporate engineering staff ran pre-production X-cars on a new vehicle durability test, the R15-23 schedule, which was then under development by DT&D, intended to be more abusive than the usage to which any single car in consumer service would be subjected over the life of the vehicle. Two versions of the R15-23 schedule - one of 65,000, the other of 100,000 miles - were run by X-cars. The drivers, hired from the general population, were asked to report any aspect of design, performance, or durability that displeased them or seemed to be unusual about the vehicles, from which the DT&D staff prepared written test incident reports ("TIRs") to be sent to the engineers responsible for the design of the pertinent system. In the fall of 1978, Buick began to receive TIRs from DT&D describing instances of "premature" rear wheel lockups reported by drivers running one R15-23 schedule. Buick engineers inspected and rode the suspect vehicles, concluding that the incidents were, once again, single rear wheel lockups, a conclusion confirmed for them by the discovery of unilateral glazed or cracked linings and found only on the offending wheel.[13]

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[12] Although the documents themselves do not say so, GM insists that it assessed all such incidents as "one-wheel takeovers," i.e., a single rear brake generating a significantly disproportionate amount of brake torque relative to the other, attributed to sustained exposure to high operating temperatures, producing changes in the chemical composition of brake linings.

Nevertheless, in mid-December, 1978, the DT&D staff gave a status report on the R15-23 durability testing of the X-car generally to senior GM management gathered for a product review in Mesa, Arizona. One item prominently on the agenda was the subject of the reports of "rear brake overheating and premature lockup," as to which GM's then-president remarked that he did not want the X-car to go into production with any problem that might be so major as to require a "retrofit" after the cars had been built and stockpiled.

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[13] The DT&D and Buick engineers maintain that they never regarded the single-wheel lockup incidents as signifying a potential control, or safety, problem with the X-cars. Not only had they occurred only at low speeds towards the end of a stop, but a single rear wheel lockup does not of itself result in loss of vehicle control. The rolling tire on the opposite wheel, still operating below the limit of adhesion, generates sufficient side forces in conjunction with the front tires to maintain control of both path and attitude. See Part III, infra.

GM's management then directed that a "task force" be formed, under Buick's leadership, to investigate the DT&D incidents and advise whether the brake system should be produced as designed. The task force assembled consisted of some 20 engineers and supporting staff, drawn from Buick, DT&D, Inland, Delco-Moraine, GM Research, Chevrolet, and the corporate engineering staff. It undertook investigations of quality control in lining production, the metallurgy of the components, design of the rear brake, brake balance, and the severity of the R15-23 schedule, and ordered further vehicle and laboratory tests and engineering and mathematical analyses.

On January 23, 1979, the task force unanimously recommended against a delay in the production of the 1980 X-cars as designed, and to proceed with production on schedule. The task force's recommendation was successively presented on February 1st to the X-car project center, on February 12th to a meeting of the chief engineers, and on February 15th to a general managers' meeting attended by senior corporate management, at each of which the conclusions of the task force, viz., that the single-wheel lockups were due to unilateral overheating and would not be repeated in the field, were accepted. GM thus allowed production to proceed, and the X-car was first released to the market on April 19, 1979.[14]

Altogether three rear brake lining combinations were used on 1980 X-cars as produced. Nearly 200,000 manual transmission X-cars were built with the Bendix 3198/3199 rear linings. Just over 30,000 automatic transmission cars had the 4035/4050 rear linings. Approximately 825,000 X-cars were equipped with the 4050/4050 combination. Roughly 246,000 automatic transmission and 47,000 manual transmission cars had the 41% proportioner valves; the remainder were equipped with the nominal 27% valve.[15]

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[14] The task force did, however, recommend adoption of three "running production changes" in the X-car's rear brake system, all of which evince its continuing concern with its performance. One recommendation was to substitute a nominal 27% proportioning valve for the 41% valve, resulting directly in a decrease in rear braking force at higher decelerations. The other two, ostensibly to improve the rear brake temperature behavior, were a reversion to the 4050/4050 lining combination on automatic transmission X-cars, and the use of a "finned" drum (with greater capacity to dissipate heat) in lieu of the smooth drum initially installed. The lining change was implemented in March, 1979; the 27% proportioner valve and finned drum came into production during August, 1979.

[15] The actual slope of the 27% valve is, in fact, approximately 30-31%.

III.

The primary function of any motor vehicle's braking system is, of course, to enable the driver to slow the vehicle at a desired rate, varying its speed and position in traffic or on the road, or bringing it to a stop. When the brakes are applied, retarding forces develop between each tire and the pavement which cause the car to slow. The magnitude of the braking force that can be generated at each tire/road interface is limited by the adhesion characteristics of the tire and the road, which are expressed in terms of the coefficient of friction (μ) of the tire/road interface.[16] The higher the coefficient of friction, the greater the braking force potentially available to slow or stop the car.

Braking force at the tire/road interface is created by application of the brakes. By depressing the brake pedal, the driver causes hydraulic pressure, in a disc brake, to clamp the brake linings against both sides of a metal rotor mounted on the wheel; in a drum brake, the brake linings are pressed against the inside walls of a cylindrical drum, also mounted on the wheel. The resulting friction force between the linings and the rotor or drum produces brake torque which will vary with changes in the coefficient of friction at the lining/rotor or lining/drum interfaces, the hydraulic pressures, and the physical dimensions of the brake components. The greater the brake torque created within the wheel, the greater the potential brake force that can be generated at the tire/road interface, within, of course, the limits of tire-to-road adhesion.

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[16] The "coefficient of friction" is a mathematical calculation, $\mu = F/N$, where F is the force required to slide one object over another and N is the vertical, or "normal" force, perpendicular to it.

As a matter of principle brakes are designed to generate friction forces sufficient to take optimum advantage of tire/road coefficients of friction. Since stopping distance is also a function of mass, however, more braking force is necessary to stop a fully loaded car than a lightly loaded car in the same distance. Thus, as a rule, brakes must be designed to generate the larger braking forces sufficient to achieve the highest deceleration rates attainable for a fully loaded vehicle.

On slippery road surfaces, with lower coefficients of friction, the maximum rate of deceleration is correspondingly reduced, because the braking force that can be generated at the tire/road interface is less than on a better pavement with a higher coefficient. Yet a driver can still apply the brakes as hard (and generate the same brake torque) as when the car is on a high-coefficient road surface. Regardless of road quality, however, if the driver applies the brakes sufficiently hard so that the braking forces exceed the available friction forces at the tire/road interface, each tire at which the limit of adhesion is reached will "lock up," or skid.

"Brake" (or "wheel") "lockup," therefore, does not represent a systemic mechanical malfunction, or a broken or failed part.[17] Brake lockup can occur, and the locked wheel will skid, notwithstanding the brake system and all its components are performing precisely as intended, simply because the driver has applied the brakes with too much force relative to extant tire and road conditions. Skidding results from the interaction of the driver, the brake system, and the tire/road interface, and while on occasion it may be both alarming and dangerous, skidding _in and of itself_ is not a failure of vehicle "performance" nor indicative of a brake "defect."[18]

The consequences of a skid are likewise explained by the laws of physics. In addition to steering input, a car is also controlled in its speed and direction of travel by the tire/road friction forces. When a tire is simply rolling straight, without either being accelerated or decelerated, it uses relatively little of the available friction limit to maintain its speed, leaving most of the potential tire/road friction forces available for steering and stopping. Friction forces resulting from any combination of steering and braking diminish the ability to generate control forces at the tire/road interface, and, when the limit of adhesion is reached, the tire can no longer generate any side forces for path or attitude control. Thus, since steering is accomplished through the front wheels, turning the wheels to avoid a collision is totally ineffective when they are locked and skidding.

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[17] Brakes lock the wheels when the driver applies the brakes with sufficient force to cause a tire to cease rotation, and a non-rotating wheel on a moving car is said to be "locked up." The terms "brake lockup" and "wheel lockup" are colloquialisms that are used interchangeably in this case to refer to a skid.

[18] A brake lockup condition can be relieved in either of two ways: the driver may modulate the pedal to reduce the brake torque so that the locked wheel resumes rotation, or the tire may skid on to a less slippery portion of the pavement, increasing friction forces available between the tire and road sufficiently to cause the wheel to resume rotation.

Moreover, a sliding tire has a lower tire/road coefficient of friction than that of a rolling tire on the same surface. Since the deceleration rate of a car cannot exceed the coefficient of friction at the tire/road interface, a car can stop in a shorter distance if the limit of adhesion is not reached and the tires continue to roll during braking. For any given tire/road interface, there is a "peak μ," representing the maximum deceleration rate attainable with the tire rolling, and a "slide μ," which represents the lower rate the car can achieve while skidding on the same surface. A car with one or more of its wheels "locked" and skidding has a diminished deceleration potential, and, hence, a correspondingly lengthened stopping distance, in comparison to another with all tires close to the limit of adhesion but still rolling.

An ideal brake system would, therefore, operate to approach the limit of adhesion at all four wheels simultaneously, whatever the coefficient of the surface upon which the car is traveling, making the maximum friction forces at each tire/road interface available to the driver for control purposes. Such a car, i.e., one that will develop precisely the brake torque at each wheel as necessary to achieve simultaneous incipient four-wheel lockup is said to have "ideal brake balance."[19] With ideal brake balance, a car possesses its shortest possible stopping distance capability; the maximum braking forces at each tire can be sustained, and the maximum deceleration rate attained, before any wheel locks up.

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[19] Brake balance is said to be "ideal" when the distribution, or proportion, of braking forces among the tires is equal to the distribution of normal forces on the tires. A car having 40% of its normal force on each front tire and 10% on each rear tire during a stop that also develops 40% of its total braking force at each front tire and 10% at each rear tire is ideally balanced. All four tires would reach their limits of adhesion simultaneously, assuming a uniform coefficient surface, and thus enable the car to reach its full deceleration potential before experiencing wheel lock.

As a practical matter, however, ideal balance can never be achieved by any brake design throughout the entire range of operating and loading conditions to which a car is subjected.[20] The limit of adhesion at each tire, being a function of both the tire/road coefficient and the normal (vertical) force on the wheel at any given instant, is a transient or dynamic value that will vary from stop-to-stop and even during a single stop.[21]

The tire/road coefficients that a car may encounter are also affected by tire condition,[22] particularly tread wear, and inflation pressure, and may vary from point to point on an apparently uniform surface due to environmental factors, e.g., patches of rain or snow, or contaminants such as gravel, vegetation, oil, or debris. And the surface characteristics of roads themselves change over time as they become worn or damaged.

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[20] Advances in electronic and microchip technology have made possible electronic "antilock" braking systems that have begun to appear recently on cars marketed in the United States. Such systems "sense" wheel speed independently for each wheel several times a second and "back off" line pressure if a lockup is imminent. No American-built 1980 model cars had them, and earlier efforts to apply more primitive mechanical "antilock" systems were not successful. See Paccar, Inc. v. NHTSA, 573 F.2d 632 (9th Cir.), cert. denied, 439 U.S. 862 (1978).

[21] The limit of adhesion, at which the maximum braking force is available at a tire/road interface, is the product of the coefficient of friction and the normal force at that interface ($L=\mu N$).

[22] While the magnitude of their effect is disputed, variations in tire inflation pressure and tread wear are acknowledged to have at least some effect on tire/road coefficients, and a significant percentage of cars on the road have substantially worn and/or improperly inflated tires. Different tire compounds and tread patterns can also produce different coefficients. The importance of these factors in influencing the sequence of wheel lockup is apt to be greatest when the car is close to ideal brake balance.

There are two principal factors affecting the normal force on each tire, and therefore its maximum braking force, one being the loading condition of the car. In general, a lightly loaded vehicle has a greater percentage of its weight on the front tires, less when it is filled to capacity with passengers or cargo. Thus, even in a static state, ideal brake balance for a particular car would require a different distribution of brake torque among the four wheels in a fully-laden as opposed to a lightly-loaded condition. Then, of course, the effect of differences in static weight distribution is compounded by the dynamic transfer of normal force which occurs from the rear wheels to the front wheels during braking. As a vehicle decelerates, the inertia of its mass causes an increase in the normal force on the front wheels and a corresponding decrease in the rear, the magnitude of the rear-to-front dynamic force transfer being a function of the deceleration rate.[23]

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[23] There are yet other complexities involved in trying to achieve ideal brake balance, such as the effects of speed, changes in the rolling radius of the tires, and steering input which not only reduce the friction forces available for braking but will induce as well a side-to-side inertial force transfer that may affect the sequence of wheel lockup.

. Because ideal brake balance for a car differs with virtually every deceleration it undergoes, some wheel will be virtually certain to lock up before another, if lockup occurs at all, and it is the sequence of lockup between the front and rear wheels that has become the central focus of this case. "Front brake lockup," or "front lock," as the terms are used here, refers to the situation in which both front wheels lock before either rear wheel during a brake application, and a car's brake system is described as "front biased" if the car will experience front brake lockup first in a stop sufficiently hard to produce lockup at all. Conversely, "rear brake lockup," or "rear lock," contemplates both rear wheels' locking before either front wheel, i.e., a "rear biased car" will lock its rear wheels first if the point of wheel lock is reached during a stop.[24]

Certain adverse control consequences attend both a sustained front or rear brake lockup. Steering control over the direction, or path, the car is traveling is reduced in either case, because side forces cannot be developed at the sliding tires, and stopping distance is extended, because the braking forces at the sliding tires have been diminished by the lower slide coefficient. These same adverse consequences, however, also occur in instances of four-wheel lockup, whether consequent to ideal brake balance or simply a sufficiently hard brake application.[25]

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[24] The adjective "premature," as it modifies "lockup," is also a colloquialism without scientific meaning, and expresses only a subjective judgment of the driver as to when he might expect his wheels - either front or rear - to lock up in any given stop. The further away a vehicle from the ideal brake balance, the greater the degree of "prematurity" perceived by the driver of the lockup of the wheels favored by the bias.

In most modern cars most of the weight is borne by the front wheels which are therefore expected to contribute more braking force in routine operation than the rear wheels. The drop in tire/road coefficient from peak to sliding which results when the front wheels alone lock extends a car's minimum stopping distance more than with rear brake lockup. A sustained front brake lockup on an X-car, for example, will extend its minimum stopping distance by 25% over that attainable when its rears lock first.[26]

On the other hand, a front lock condition is considered "stable" in an engineering sense because, even though a coinciding lateral force, or "moment," whether endogenous or exogenous, may cause the car to oscillate, or "fishtail," its natural tendency is to return to its original attitude before the force was applied. Conversely, a rear brake lockup results in an "unstable" condition; a lateral force or moment can initiate a "yaw," or rotation around the car's vertical axis, which, unless brought under control, is self-energizing and will continue until a state of equilibrium is achieved. In sum, a sustained front lockup will extend minimum stopping distance vis-a-vis a rear lock; with sustained rear brake lockup, a car is more apt to yield to yaw, or "spin-out."

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[25] Studies indicate that in perceived emergencies, to avoid a collision most drivers instinctively apply the brakes with force sufficient to lock all four wheels simultaneously, regardless of whether the car is front biased or rear biased.

[26] On a slippery surface (.5 peak μ/.3 slide μ) at an initial speed of 30 mph, an X-car sustaining front brake lockup will require 17' more (84' v. 67') to stop than with rear lock. At 55 mph, the rear lock condition improves stopping distance capability relative to front lock by 56'. Assuming a constant deceleration rate from those two initial speeds, the X-car with front lock would be traveling at 13.5 mph and 24.5 mph, respectively, at the points at which the X-car with rear lock would be completely stopped.

Stability, however, does not connote controllability, nor does instability render the vehicle uncontrollable.[27] A car with front lock can be directionally controlled only by the correct driver response of brake modulation, for unless the lockup condition is relieved, the car will tend to slide in a straight line following the path it was traveling when its wheels locked. Thus, a curve cannot be negotiated nor an object directly ahead avoided, while front lock persists.

In the rear lock condition, a car will stop in a straight line only if no significant lateral force is exerted on it. Once the car does begin to yaw, the capacity of the front tires to generate sufficient side forces to enable the driver to regain control over the car's attitude by steering may be overwhelmed as the moment reinforces itself. Once again, however, as directional control may be recovered following front lock, so also may the driver bring a yawing car under control with its rears locked - by properly modulating the brakes.[26]

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[27] Control of a car involves several parameters of which stability is but one. A stable system tends to resist control inputs, while instability tends to augment them. For example, a large ocean tanker is very stable underway, but, therefore, not very controllable.

IV.

Front-to-rear "brake balance" refers to the distribution of braking torque or braking force between the front and rear wheels. It is the engineering parameter for ascertaining the relative propensity of cars to proceed to either front or rear brake lockup first. No matter the brake components used, their condition, or how they work in conjunction with one another, their effect on the sequence of wheel lockup depends upon the brake torque they generate and the resulting braking forces created at the tires. By measuring either brake torque or braking force at the four wheels, engineers can determine the distribution of braking between front and rear tires, quantifying the results in terms of degrees of "front bias" or "rear bias," from which the sequence and timing of wheel lockup can be theoretically predicted for any given stop on any surface coefficient.

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[26] As the evidence vividly demonstrated, however, a moving vehicle may experience yaw with any combination of wheels locked, or as a result of the exertion of forces upon it that involve no braking at all. Rear brake lockup does not "cause," nor is it inevitably accompanied by, yaw. See Part VII, infra.

Engineering witnesses for both sides ultimately adopted a concept of "brake efficiency" as a uniform expression of the degree of a car's brake balance. Brake efficiency is a percentage calculated by dividing the tire/road coefficient into the maximum deceleration rate (in units of gravity) a car can achieve before experiencing front or rear brake lockup. Thus, a 100% efficient braking system equates to ideal brake balance; the car can attain a .8g deceleration rate on a .8 peak μ surface before experiencing wheel lock.[29] A car that is 75% efficient on the same surface would experience brake lockup, either front or rear, at a .6g deceleration rate. And as between two cars known to be rear biased, one at 80% efficiency and the other 70% efficient, on the same surface, the latter will develop rear brake lockup at a lower deceleration than the more "efficient" car.

Measurements of brake torque have historically been made with "torque wheels," specially instrumented wheels employing strain gauges to record brake torque electronically throughout a deceleration. Braking force at the tire/road interface can be measured by a device developed by GM in conjunction with its trial preparation for this case called a "road transducer pad" ("RTP"), an instrumented road surface that records longitudinal forces and deceleration rates at the tire/road interface when rolling wheels are run over it during a brake application. Although the government was dubious of the RTP technique, RTP and torque wheel measurements proved to correlate well, and measurements by both methods were employed, when it served their purposes, by the engineers who testified for both sides.

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[29] It so happens that the laws of physics dictate that maximum deceleration rate in gravity units is essentially equal to the value of the peak tire/road coefficient.

The competing considerations for or against front bias or rear bias as a desirable design objective have been understood and appreciated within the brake engineering community for many years. Technological limitations simply require that compromises be made in reaching an engineering consensus as to an optimum braking distribution that addresses both stopping distance and vehicle control objectives in the myriad loading and road-surface conditions most cars will encounter in years of normal service. Differing views as to how much to emphasize stopping distance or stability at the expense of the other have provoked academic controversy in the engineering literature which is still unresolved, and has prompted those nations with mature automotive industries to adopt somewhat divergent regulatory approaches. In the United States minimum stopping distance has historically prevailed over stability as the paramount objective of effective braking, and this preoccupation, which has only recently been called into question, is expressed in the prevailing federal regulatory standard governing braking, and reflected as well in the published writings of American brake engineers and the measured brake balances of cars built by the American automotive industry from the early 1970's well into this decade.

In 1976 NHTSA promulgated Federal Motor Vehicle Safety Standard 105-75, 49 C.F.R. § 571.105 ("FMVSS-105") establishing mandatory performance requirements for every new car sold in America "to insure safe braking performance under normal and emergency conditions." 49 C.F.R. § 571.105(S2). FMVSS-105 specifies that a car be able to stop within prescribed distances on a series of "effectiveness" or stopping distance tests. Nine of the ten effectiveness stops must be made at gross vehicle weight. Only one is to be made in the lightly loaded condition. Contrasting with its exacting requirements as to stopping distances, FMVSS-105 imposes no express requirements relating to vehicle stability, other than that the vehicle not deviate from the roadway during deceleration. The locking of any one wheel is permitted at any speed, any two or more wheels may lock at speeds below 10 mph, and no wheel lockup sequence is prescribed. The emphasis on stopping distance for the heavily laden vehicle, of course, implicitly encourages brake balance design tending toward rear bias at lighter loads.[30]

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[30] NHTSA insists that front biased cars, properly constructed, can pass FMVSS-105 at all loading conditions, but brake balance measurements made by both GM and NHTSA in the course of this case on several hundred competitive cars show that a substantial percentage of cars in service in America between 1977 and 1984 had some degree of rear bias and were intentionally so designed,

*. In its subsequent rulemaking proposals in 1979 and 1981 NHTSA continued to stress stopping distance as the primary safety factor. In 1979, when NHTSA proposed extending FMVSS-105 to light trucks and vans to improve their braking capability, it justified the proposal by observing that studies showed "small percentage reductions in stopping distance consistently result in proportionately larger reductions in accidents or accident severity." 44 Fed. Reg. 60116 (1979). Then, having succeeded in extending FMVSS-105 to light trucks and vans, NHTSA rejected petitions for reconsideration, calculating that a 4% improvement in stopping distance capability would result in a 5 to 9% reduction in accidents in which brakes are used, 46 Fed. Reg. 61892 (1981), and noting again that improved stopping distances not only avert some accidents but also reduce the speeds at which the remainder occur, thereby reducing their severity. _Id._ at 61893.

The European Common Market countries have taken a different regulatory approach in their braking standard. Regulation 13 of the United Nations Economic Commission for Europe ("ECE") demands less braking efficiency of the heavily laden car, i.e., it tolerates somewhat longer stopping distances, but prohibits wheel lock altogether and prescribes express limits to the degree of

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including models manufactured by Ford, Datsun, Chrysler, Toyota, Honda, and Renault.

rear bias a car may exhibit, disallowing it in all but mid-range decelerations. In other words, the European approach reflects more concern with stability than stopping distance.[31]

V.

NHTSA conducts its investigations of suspected safety-related defects in motor vehicles through its Office of Defects Investigation ("ODI"). ODI is headed by a Director, under the supervision of an Associate Administrator for Enforcement, who reports, in turn, to the NHTSA Administrator. ODI's phases of investigative activity proceed from an "engineering analysis," which may be followed by a formal case "investigation" and conclude in the "Phase I Report," the agency's initial defect determination and notification to the manufacturer. If contested, the matter then goes to a public hearing, and, ultimately, results in NHTSA's final determination and an order for recall if warranted.

NHTSA initiated an engineering analysis of GM's 1980 X-body vehicles in November, 1979, after observations made at the FMVSS-105 compliance testing (conducted by NHTSA's Office of

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[31] Shortly before this trial concluded, it was reported to the Court that NHTSA had published a notice of proposed rulemaking to consider adoption of a new American braking standard, to become effective in 1991 as FMVSS-135. The proposed standard, which is still under consideration, would expressly require that 1992-model and later new cars be predominantly front biased.

Vehicle Safety Compliance) raised its suspicions that 1980 X-cars might be predisposed to unanticipated lockups of the rear wheels while being braked. By the time the engineering analysis had been completed in June, 1981, NHTSA had on hand some 212 complaints of the misadventures of X-car drivers, 58 of them culminating in accidents, which might have been preceded by a rear wheel lockup. A search of NHTSA's computer bank revealed some 54 additional complaints about the 1980 X-cars, compared to none for any other front wheel drive cars, including GM's own 1981 X-cars. Consequently, a formal case investigation was opened on July 2, 1981.

On July 6, 1981, the ODI Director wrote to GM stating that NHTSA believed "the rear brake system of the 1980 X-body vehicles (utilizing the 41 percent valves and aggressive brake linings) contains an engineering defect which has safety-related implications. . . ." and urged GM to commit itself to "corrective action . . . within five (5) working days." GM's response of July 8, 1981, stated that the company would "initiate a recall modification relative to the involved vehicles," and, thereafter, on August 5, 1981, GM undertook to recall 47,371 manual-transmission-equipped vehicles for a proportioning valve change. Although the recall itself covered only certain early-production manual-transmission-equipped vehicles, i.e., those manufactured with a 350 x 41% proportioning valve, GM also authorized dealers to make the proportioning valve change on automatic transmission-equipped vehicles if "it becomes necessary to satisfy an owner complaint . . . in the interest of maintaining customer satisfaction." The company also authorized a change in the rear brake linings for complaining owners of later production manuals, i.e., those manufactured initially with the 350-27% proportioning valve.

ODI had developed a test plan in late June, 1981, to attempt to identify what might be mechanical causes for the complaints it was receiving, in the course of which it would examine the X-cars' rear brake linings, brake drums, proportioning valves, and parking brake cable routing. Tests conducted in July, 1981, and repeated somewhat more formally in the fall of 1981 at NHTSA's Engineering Test Facility in East Liberty, Ohio, indicated to NHTSA's engineers that the components having most pronounced effect upon rear brake output were, indeed, the proportioning valve and the rear brake linings, whether or not they were "causes" of the drivers' mishaps.

On January 14, 1983, NHTSA notified GM that the agency had made an initial determination, pursuant to 15 U.S.C. § 1412, that all 1980 X-body vehicles - manuals and automatics - equipped with more aggressive rear brake linings contained a defect which related to motor vehicle safety, and scheduled a statutory proceeding under 15 U.S.C. § 1416 to review the adequacy of the

1981 recall. Public announcement of the initial determination was given nationwide publicity, including NHTSA's release to the television networks of film clips of an X-body test vehicle undergoing a dramatic skid-and-yaw, and on February 9, 1983, GM capitulated. It notified NHTSA that it would voluntarily recall all of its 1980 X-cars equipped with manual transmissions, and certain early-production automatics, too. Accordingly, with the necessity for a compulsory recall order abated, NHTSA cancelled the public proceedings scheduled to begin the following month. On March 18, 1983, GM specified the corrective action it intended to take: not only would it install new rear brake linings and park brake cables on the recalled vehicles, it would also "inspect the front brake system and provide replacements of parts necessary to provide uniformity of the entire brake system."

While awaiting the recall specifications, on March 4th NHTSA sent GM a comprehensive "special order and document production request," a subspecies of process akin to an administrative subpoena, pursuant to 15 U.S.C. § 1401(c). The special order directed GM to provide NHTSA with copies of internal GM documents not previously furnished relating to the "premature rear brake lockup" phenomenon NHTSA was investigating. GM responded in three installments, between March 25 and March 31, 1983, the final installment enclosing the collection of TIRs generated during the R15-23 schedule, which revealed to NHTSA for the first time, it says, that not only had GM's own test drivers reported "rear wheel lockup" incidents on pre-production X-body prototypes more than two years before, but also that GM management had felt compelled to create an unprecedented "task force" to deal with the very problem NHTSA was investigating.

Less than a week later NHTSA issued a formal administrative subpoena to GM requiring it to produce both records and one or more knowledgeable officials to testify about them. Thereafter, administrative depositions and document production continued until NHTSA aborted the administrative proceedings in favor of the instant action.

On August 3, 1983, when the complaint was filed, NHTSA claimed to be in possession of more than 2,000 consumer complaints it classified as incidents of probable "premature rear wheel lockup." Included among them were multiple instances of accidents, injuries, and fatalities; if the incidents were attributable to a vehicle defect, the defect was indisputably safety-related.

VI.

For reasons to become apparent, notwithstanding the extensive engineering tests conducted by both sides on X-cars, other cars, and their various components, the government chose to rely primarily, throughout trial and thereafter, upon evidence of X-car "consumers'" personal experiences to meet its burden of proof that GM's 1980 X-cars are generically afflicted with a safety-related defect. That evidence took several forms: 1) in-court testimony of 12 live-witness consumers who had lost control of their 1980 X-cars while attempting to slow or stop; 2) depositions of absent consumers in which similar incidents were described; 3) unsolicited written complaints sent to the government or directly to GM from around the country recounting still more such incidents; 4) an assessment of complaints received, analyzed by a vehicle dynamicist and a statistician in conjunction with one another, which purportedly establishes that a substantial majority of them reported experiences which were "consistent with" instability accompanying early rear brake lockup; and 5) comparisons of the absolute numbers and normalized rates of complaints received by the government regarding the 1980 X-car, as compared to the lesser numbers of complaints made about other cars.

According to the government, the 1980 X-car has been the subject of the largest number of reports of what it terms "yaw instability" of any car in NHTSA's history. As of the end of February, 1985, more than two months before the end of the trial, the total number of complaints received by NHTSA which it was prepared to classify officially as cases of "probable premature rear brake lockup" exceeded 4,000. When trial began the number was in excess of 3,500, of which over 300 reported injuries or fatalities, and nearly a third mentioned at least property damage accidents.[32] The number of similar complaints about other car models, by contrast, was negligible, NHTSA says, except for two others (one of them a GM product) also currently under investigation.

The testimony of the government's 12 typical "consumers" who appeared at trial (owners and/or drivers of 1980-model GM X-cars from various parts of the United States and Canada) is the centerpiece of the government's circumstantial proof-of-defect-by-failure-of-performance-alone evidence. Pretermitting questions of admissibility, the Court assumes that their experiences are representative of those related in truncated form in most, if not all, of the affidavits/declarations, depositions, and unsworn complaints offered by the government for cumulative purposes, or, in other words, the affiants/declarants, deponents and complainants would have given similar testimony if called.

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[32] Although GM sold X-cars with nine separate combinations of brake components, the evidence shows that none of the configurations was immune from complaints. Even before the adverse national publicity in January, 1983, attendant upon NHTSA's initial defect determination (for which GM blames most of the outcry), GM itself had received some 700 complaints about 1980 X-cars; 269 involved automatic transmission cars, 237 of them from the population of automatics never recalled.

The consumers had certain characteristics in common; in others they were unique. Four were male, eight female. The males acknowledged responsibility for the maintenance of their vehicles, while the females generally entrusted maintenance to male members of their households. They were all mature, ranging between 37 and 73 years of age. All had many years' driving experience (none less than 20) with many different types of automobiles, and all had generally good driving records. Their driving experience had been acquired in geographic locations as diverse as southern California and Ontario, Canada, New York City and Waukesha, Wisconsin. And the experiences they described which the government contends evinces the "defect" in their X-cars occurred in every climatic condition, ranging from heavy snow to dry summer heat, and on every sort of road: freeways, interstates, two-lane country roads, multi-lane urban arteries, bridge approaches, and residential neighborhood streets. None of them had ever experienced the phenomenon to which they testified in any other vehicles they had driven in all their years of driving. All professed to be able to distinguish it from control difficulties associated with ice or snow. All had made some effort to ascertain and correct the cause, both through and outside GM channels (some with more persistence than others), without success. Some retained their 1980 X-cars; others had traded them in for cars made by other manufacturers, and several had traded for later-year-model X-cars.

The phenomenon to which each testified, however - variously described, but recognizable as similar nevertheless - was a "yaw," or a swerve by the rear to a marked degree, either left or right, from the axis of travel upon the application of "moderate" to "moderately hard" brake pressure, while traveling at relatively modest rates of speed. Each asserted that he or she "lost control" of the car's direction of travel altogether until coming to rest, at angles varying from 30° to 180° from the original heading. Each had had more than one such experience, some as many as six, which were separated, however, by intervals of weeks or months, sometimes years, during which the vehicle had behaved unremarkably. Since the incidents would occur intermittently and without warning, they could not be anticipated and prepared for. Several of them had resulted in collisions with stationary roadside objects or other vehicles unable to avoid them, inflicting significant property damage. None of the consumers was ever able to convince General Motors, or a GM dealer, that what had happened to them was the fault primarily of the vehicle and was amenable to mechanical correction.

The testimony of the consumer witnesses was supplemented with a complaint analysis by the government's vehicle dynamicist who reviewed 109 declarations procured by government attorneys from other X-car owners who had complained to NHTSA of similar experiences.[33] Three-fourths of them, in his opinion, described experiences "consistent with" rear brake lockup instability, and, using the dynamacist's criteria for so classifying them, a government statistician made projections with respect to the remainder of the complaints, concluding that over 1,400 of them reported incidents which could likewise be characterized as "consistent with" rear wheel lockup instability. (Almost half of them had come from owners of automatic transmission X-cars which had never been recalled.) By cumulating the consumers' testimony with that of the deponents, three-quarters of the declarants, and the 1400-plus complainants, the government contended it had demonstrated, by a "failure of performance" of a clearly non-de minimis number of vehicles, the existence of a safety-related defect in 1980 X-cars which two recalls had failed to remedy.

Corroborative of the consumer evidence, the government asserted, was the documentation divulged by GM under compulsion which not only confirmed that the consumers' experiences were not illusory, but supplied proof that GM had, in fact, determined for itself that its 1980 X-cars were prone to "rear wheel lockup" before they went into production and had nevertheless allowed them to be sold to the public. In the aggregate, according to NHTSA, GM's internal writings constituted a virtual admission of a breach of its statutory duty.

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[33] The declarants were "randomly" selected, NHTSA said, from a sample of the 2,000-plus complaints NHTSA had in hand at the time.

The chief of NHTSA's Defects Evaluation Division, ODI, testified to his analysis of the thousands of documents supplied by GM by the-end of the administrative inquiry. According to his reconstruction of the X-car brake design process from the documents, beginning in mid-1978 GM test drivers had begun to submit their reports of "rear brake" or "rear wheel" lockups, and the reports had been circulated throughout the corporation to the considerable consternation of senior management. At the December, 1978, meeting at Mesa, Arizona, ostensibly called to review the general "durability" test results on the X-car before the start of production, the most exalted of GM's executives, including its president, were told that the testing had revealed, among other design "deficiencies," a problem with "rear brake lockup" which remained "unresolved" despite efforts to correct it.

After the Mesa meeting, and the formation of the "task force" to consider whether to delay the start of production and to propose solutions for the "lockup problem," in late January, 1979 (less than two weeks after its initial meeting) the task force declined to recommend a delay of production start-up, even though it had not found an explanation for the problem and its testing had not been completed, while simultaneously suggesting, nevertheless, various design changes clearly indicating that it knew brake design should be moving in the direction of diminished rear braking, e.g., reducing the hydraulic pressure to the rear brakes by changing the proportioning valve slope and/or break point; using less aggressive rear brake linings; and installing finned drums to reduce rear brake temperatures.[34]

Even after the X-car had gone into production in January, 1979, GM continued its "durability" testing, using production X-cars in addition to lead unit build models, and test drivers continued to report incidents of brake lockup, prompting a GM senior vice president of engineering to expostulate, in a contemporaneous memorandum NHTSA finds particularly incriminating:

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[34] At the February 1, 1979, chief engineers' meeting, after production had commenced, representatives of Buick presented their three design modifications as the recommendations of the task force, i.e., use of a 350 x 27% proportioning valve, 4050/4050 rear linings, and finned rear brake drums. Whether these three changes truly represented the task force "consensus," NHTSA submits, is doubtful; it found no other task force document to corroborate Buick's characterization of it as such.

The three modifications were adopted as "running changes," but only after thousands of X-cars had been manufactured without the changes, and without retrofitting. GM began installing finned drums on production X-cars on August 15, 1979, by which time over 278,000 X-cars had been built with nonfinned drums. On August 27th, 27% proportioning valves came into use on production X-cars, nearly 294,000 X-cars having been equipped with the 41% proportioning valve in the meantime.

> Don't you know that you never lock the rear wheel brakes first?!!
>
> How are such product decisions made?
>
> What event caused the design responsible division to change their mind on this matter?
>
> How could we miss something so obvious?!!
>
> How can GM put out such a system?
>
> Engineering Staff is not doing its job!

As late as May 7th the same vice president wrote:

> "Every time I ask, I am told the "X" car brakes are fixed. These tests do not indicate they are. What do we have that does?"

(On July 11, 1979, finned drums were first installed on test cars, and thereafter the internal lockup reports apparentl ceased during the remainder of the durability testing.)

Soon after the first X-cars went on sale in April, 1979, General Motors, too, began to collect complaints from its employees and customers of the sort that NHTSA characterized as "consistent with" rear brake lockup. In 1980, GM began to catalogue the complaints according to the various brake component configurations then in service. Its records reveal that X-cars with 27% proportioning valves, 4050/4050 rear linings, and finned drums were generating fewer complaints from the field than any of the other configurations. Yet it made no effort to do anything about those otherwise equipped until its first recall the following year.[35]

VII.

Once the government had completed its prima facie presentation, and the Court had denied GM's motion to dismiss pursuant to Fed.R.Civ.P. 41(b), first GM (in its case-in-chief), then the government (in rebuttal), and, finally, GM (in surrebuttal) presented extensive evidence of the results of actual tests made on X-cars, their commercial competitors, and the components of both. The trial record is replete with engineering data.[36]

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[35] In July, 1980, almost at the conclusion of the production of the 1980 model, GM redesigned the X-car's park brake system, allowing it to use 4050/4050 linings on even manual transmission X-cars and still be assured that they would comply with FMVSS-105. However, by July, 1980, GM had produced some 200,000-plus manual transmission X-cars with the Bendix 3198/3199 linings.

Installation of 4050/4050 linings as original equipment on automatic transmission X-cars began in March, 1979, after, however, it had produced nearly 32,000 automatics with the 4035/4050 linings.

[36] Both sides were not only required to produce to one another in advance the data underlying the test programs to be presented in court, they were expected as well to depose any expert witnesses by whom it would be presented, and those by whom it may have been collected if necessary, substantially before it was received into evidence. Consequently, they were prepared to, and did, make full use of one another's data to the extent it suited their purposes.

. The Court finds the vehicle test results to be the most objective, least ambiguous or equivocal, and hence the most convincing evidence adduced. It is the primary basis for this decision.

General Motors measured the brake balance of 73 "current configuration" X-cars,[37] 24 of which had been the subjects of consumer complaints. NHTSA measured the brake balance of 30 X-cars (including later models), three of which were complaint vehicles. NHTSA also determined the wheel lock sequence of more than 140 additional current configuration X-cars, without, however, measuring their brake balances.[38] Then, in order to compare the X-car measurements to some external standard, both parties also tested a number of competitive, or "peer," cars (referred to by GM as "state-of-the-art" cars). GM initially tested 57 competitive vehicles, nearly all of which dated from the 1979-83 model years. Then, reacting to NHTSA's intimations that the competitors might not be fairly representative, GM tested an additional 97 cars from particular model lines, and a statistically random sample of 101 other competitive cars - 104 Ford Fairmonts, 57 AMC Alliances, and 55 Chrysler Cordobas, all but the Alliances dating from the 1979-81 model years. NHTSA evaluated 41 competitive cars for wheel lock sequence, but did not measure the brake balance of any.

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[37] "Current configuration" refers to X-cars equipped with 8032 front brake linings, 4050/4050 rear linings, with either 41% or 27% proportioner valves, and either smooth or finned rear brake drums, i.e., configurations remaining on the road post-recalls.

[38] Altogether, 302 "as received" X-cars (including some equipped with pre-recall rear linings and others with "aftermarket" linings from non-GM sources) and 526 "peer" cars were tested in some fashion by the parties. The "as received" measurements reflected the cars' brake balances as of the time they were acquired from the owners for testing, i.e., with such changes in brake balance from design intent as may have occurred while the cars were in customer service for any reason.

The results of the test programs were definitively consistent, regardless of which party conducted the tests and recorded the data, or the manner in which the test cars were obtained. The results conclusively disprove the existence of any common engineering idiosyncrasy in the braking performance of 1980 X-cars not found in their competitors, no matter how configured, and whether or not it could be termed a "defect."

First, the percentage of competitive cars found to be rear biased in the "as received" condition, lightly loaded, was not only substantial; it exceeded that of the X-cars. NHTSA's initial evaluation of wheel lock sequence of 102 X-cars and 41 peer cars indicated that a driver was more likely to encounter rear bias and/or rear brake lockup in a non-GM car than in an X-car on both low and high coefficient surfaces.[39] In each of the three samples of competitive cars chosen by GM and NHTSA for testing, well over 50% of them were rear biased on a .5 peak µ surface and an even greater percentage were rear biased at higher declerations.[40]

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[39] Shortly before trial NHTSA evaluated the wheel lock sequence on 102 1980 X-cars and 41 1979-81 model peer cars with original equipment brakes. The tests were conducted on three road surfaces using electronic decelerometers, pedal force transducers, and outside observers to determine wheel lock sequence. On high traction asphalt roads, 35% of current configuration X-cars locked rear wheels first compared to 92% of the peer cars tested by NHTSA. On the lowest coefficient road, the figures

Second, the braking efficiencies of rear-biased competitive cars in customer service were found to be generally lower than the efficiencies of rear biased X-cars, including so-called "complaint cars." Whereas competitive cars ranged as low as 60% in efficiency, the most inefficient X-cars were at 70% or higher.

Third, the brake balance of all X-cars measured in terms of their braking efficiencies fell well within the brake balance "envelope" established by the extremes of the competitors from the same and later model years.[41]

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were 25% and 58%, respectively. Moreover, the pedal force transducers indicated that the pedal effort needed to lock the second axle after the first axle had locked on the rear biased X-cars was less than that needed to lock the peer cars, i.e., the X-cars were closer to ideal brake balance.

[40] The three samples encompassed the initial 57 1975-84 state-of-the-art cars, all from the Arizona area, tested by GM without pre-screening, the 101 statistically random 1979-81 cars, from Michigan, also tested by GM, and the 41 1979-81 cars from Ohio tested by NHTSA without pre-screening.

[41] GM engineers devised graphical plots, called "cloud charts," to display the distribution of comparative braking efficiencies for the 103 current configuration X-cars and the several fleets of competitive cars tested. In each instance, a larger proportion of X-cars than peer cars appear therefrom to be front biased, and the most rear-biased X-cars were more efficient than many of the competitive cars.

Fourth, the envelope of current-configuration X-car braking efficiencies at all decelerations was more compact, and clustered in closer proximity to the ideal brake balance curve, than those of other model lines from which a substantial number of vehicles were tested, e.g., the Alliance, Cordoba and Fairmont. Of models of which multiple samples of at least ten vehicles were tested, not one was shown to have a narrower range of brake efficiency, or to possess lesser degrees of rear bias, than the 103 current configuration X-cars.

Fifth, when the "design intent" brake balance of current configuration X-cars was tested with the brakes "rebuilt and burnished," it was revealed to be front biased, even in the lightly loaded condition.[42]

In making these findings, the Court accepts the parties' respective measurements, whether made with torque wheels or the RTP, having been given no persuasive reason to do otherwise. Each side expressed reservations about the other's test protocols, but the correlations and consistency of the measurements allay any uncertainty over the extent to which test procedures may have affected the results. Ultimately, NHTSA's brake engineers tacitly conceded that the tests conducted by both did not demonstrate, individually or collectively, a greater degree of rear bias on X-cars than their competitors.

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[42] GM tested 32 X-cars with 4050/4050 rear linings in the rebuilt and burnished condition and all were front biased at all deceleration ranges except one which became slightly rear biased around .7g. NHTSA tested four such current configuration X-cars; all four were front biased in the lightly loaded condition. Smaller samples of competitive models were similarly rebuilt and burnished with new production linings; three of them proved to be rear biased in the lightly loaded condition at all decelerations.

Count I of the complaint alleged that, "for reasons relating to several distinct components" thereof, the rear braking system of the 1980 X-cars caused "premature rear wheel lock-up." Yet the government was never able to identify any "components" of the rear braking system which, separately or in conjunction with one another, consistently caused the X-cars' rear wheels to lock before the front wheels, increased rear brake output over time, or rendered X-cars as a group rear biased either when new or with use. (The measured vehicle data, to the contrary, reflected that the X-cars' rear brake output generally decreased with use).

Count II of the complaint alleged that corrosion of the front brake components diminished their effectiveness with a consequent shift in brake balance to the rear. Yet front brake corrosion was not shown to reduce front brake output, thus leaving brake balance between front and rear unaltered. GM engineers measured the brake balances of 19 X-cars received from consumers with varying degrees of corrosion of their front brake components; the most severely corroded were nevertheless front biased, and no correlation was found between front brake output and the degree of corrosion. Even corroded caliper pins could not resist the clamping force of a brake application, and the only effect of rotor corrosion appeared to be an insignificant increase in front brake output.[43]

Having found among the test vehicle population no 1980 X-cars possessing greater degrees of rear bias than competitive cars, or, for that matter, exhibiting any particular propensity to rear brake lockup, NHTSA postulated the existence of "worst case" vehicles somewhere in the undiscovered X-car universe by combining the extremes of adverse brake torque measurements made upon different X-cars tested. Such projections, however, are not only purely hypothetical, and do not even remotely approach by the measurements actually made on more than 100 X-cars, they were all but disavowed by NHTSA engineers who acknowledged that "worst-case" projections are essentially speculation rather than a valid engineering analysis.[44]

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[43] The evidence as to the effect of corrosion of the front brakes on brake balance being negligible, in mid-trial NHTSA shifted focus to certain properties of the 8032 semi-metallic lining material that might cause brake balance to creep rearward with use.

Two types of variation in 8032 output were observed by NHTSA engineers: the output is lowest when the brakes are cold, a characteristic of semi-metallic linings generally; and, over an extended journey with minimal braking, the sustained output can decline by a factor of nearly a third. The magnitude of the reduction in output under such conditions is, however, comparable to the decreases in output experienced with other linings and in other cars.

Vehicle tests of 12 competitive cars and five X-cars, tested with torque wheels, as received and then rebuilt and burnished, showed that competitive cars experienced in-use front output reductions equal to or greater than those of the X-cars. And even those current configuration X-cars with the lowest measured front specific torques were found nevertheless to be front biased.

Finally, instrumented "complaint" X-cars, other X-cars, and competitive vehicles were driven through a series of handling and control tests by GM engineers on wet and dry surfaces at all deceleration ranges. The tests were filmed, and they demonstrate repeatedly and dramatically that any car - indeed, all cars - will yaw in conducive circumstances with the front wheels locked and the rears still rolling. They will also frequently maintain a constant direction of travel notwithstanding a complete rear wheel lock alone.

In short, it appears that it is the unique character of each application of each vehicle's brakes, each deceleration being a never-to-be-replicated confluence of factors such as the immediate surface coefficient of friction, rate of deceleration, tire and brake lining condition, vehicle loading, direction of travel, driver reaction, and the like (of which brake balance at the moment is but one), which will ultimately determine whether, and to what extent, a braked vehicle will yaw. There is simply no engineering evidence of any peculiar property of X-cars generally that renders them in any way exceptional insofar as having a predisposition to yaw.[45]

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[44] Similar "worst-case" projections were readily devised by GM witnesses for hypothetical competitive cars which, were they to exist, would be even more rear biased than the most flagrantly imbalanced "worst-case" X-car.

VIII.

It is, of course, only "safety related defects" in its vehicles which raise for the manufacturer a duty to notify and repair under the Act. If direct evidence of a "defect" in 1980 X-cars' braking systems is lacking, its presence might nevertheless be inferred circumstantially from accident statistics showing X-cars to be disproportionately involved in accidents of the sort likely to begin with skid-related yaws. It was GM, however, not the government, that presented a "risk analysis" comparing the relative rates of accident involvement of 1980 X-cars with three groups of competitive cars, drawing upon accident data from two of NHTSA's own sources and ten state compilations.[46] The data bases encompassed either three- or four-year periods.

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[45] Near the conclusion of the presentation of the last of the engineering evidence, NHTSA's Associate Administrator for Enforcement conceded that NHTSA was unable to offer an "engineering explanation" for the X-cars' elevated complaint rate.

GM's risk analysis disclosed that, in each data base surveyed, 1980 X-cars consistently exhibited a relevant accident rate no worse than, and in most instances better than, the rate for not only peer car groups but also all 1980 models.[47] Data collected fof "all" accidents, "skidding" accidents, and accidents on "wet and snowy roads," demonstrate 1980 X-cars to have a proportionately lower rate of each, and the only such situation-specific data (from the state of Michigan) show the X-cars less likely to be involved in "skidding accidents concluding in side impacts" which NHTSA submits are more likely to occur with a yawing vehicle.

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[46] NHTSA's National Center for Statistics and Analysis maintains two automotive data bases: the Fatal Accident Reporting System ("FARS"), and the National Accident Sampling System ("NASS"). FARS is a census of all fatal motor vehicle accidents on public roads in the United States. NASS is a scientifically chosen sample of motor vehicle accidents which NHTSA investigates in depth for causal factors. Various states also maintain accident data bases extracted from state police reports, including Alabama, Georgia, South Carolina, Pennsylvania, Texas, Washington, Michigan, Maryland, New York and Idaho.

[47] Comparison of 1980 X-car accident rates was made to those of all 1980 model cars, a "peer group" of 20 1979-81 models matched to X-cars according to size and cost, and an "alternate peer group" of nine models from 1979-81 matched in driver demographics and environmental usage. The Ford Fairmont was the most closely matched peer car.

The government did not challenge either the data or GM' analysis of it, but only discounted its significance on the ground that incidents of rear brake lockup are relatively rare and would likely be masked by the vastly greater number of accidents for which "driver error" is responsible. Whether or not the data are sufficiently sensitive to enable a disproportionate risk of accidents due to vehicle- (as opposed to driver-) induced skidding to be detected were it present, to the extent that statistical incidence can ever prove specific events, the risk analysis supports a finding that the 1980 X-car does not have a generic brake defect that leads to lockup or skidding. The risk analysis, in other words, is consistent with the engineering test data in tending to prove the absence, not the presence, of a "safety-related defect" in the X-car.

IX.

The gravamen of this action is that General Motors failed to comply with the notice-and-remedy provisions of § 1411 of the Act, which require a manufacturer to remedy vehicles it knows to possess a "defect" that "relates to motor vehicle safety." Counts I and II charged GM with allowing its 1980 X-cars to enter the market and remain on the road with a braking system, front and rear, it knew, "for reasons relating to several distinct components of that system," was predisposed to "premature rear wheel lock-up" with consequent loss of vehicle control. Counts III and IV alleged violations of § 1414, which requires the manufacturer to repair or replace defective vehicles, in that GM's two recalls of 1980 X-cars neither encompassed enough cars to reach all those with the defect nor remedied the defect in those they did reach. And Count VI charges GM with failing to comply with NHTSA's "hotline" regulation requiring obligatory defect recall notices to bear NHTSA's toll-free telephone number. 49 C.F.R. § 577.5(g)(1)(vii) (1981).

Relief under every count of the complaint presently before the Court is, therefore, contingent upon proof of a violation of § 1411 of the Act.[48] Unless its 1980 X-cars possessed a safety-related "defect" within the meaning of the Act, GM had no legal obligation to repair or replace any vehicle, to conduct any notification and recall campaign, or to include any specific information in any notices it sent. And the government bears the burdens of proof and persuasion on the elements of each count. *See* *Center for Auto Safety, Inc.* v. *Lewis*, 685 F.2d 656, 663 (D.C. Cir. 1982) ("*Transmissions*"); *United States* v. *General Motors Corp.*, 518 F.2d 420, 438 (D.C. Cir. 1975) ("*Wheels*").

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[48] As previously noted, *supra* note 2, Count V was severed for separate trial and all proceedings thereon stayed.

The analytic framework to be employed by a trial court in "performance defect" cases under the Act was first set forth in *Wheels*, which involved a large number of broken wheels on pickup trucks.[49] The court of appeals identified three elements of a case for compulsory recall: (1) functional "failures" in the vehicle; (2) a "significant" number of such failures; and (3) a causal relationship between the failures and the integrity and/or operation of vehicle components, rather than driver fault (at least that which is unforeseeable). In *Wheels*, however, it was never necessary for the court to define a functional "failure," because it was undisputed that a broken wheel was one. *Id.* at 426-28.

This case is apparently the first enforcement action in which a manufacturer has denied that its cars experienced functional failures. GM asserts here that neither skidding nor rear brake lockup per se constitutes a functional failure, since all cars may be expected to lock wheels under some circumstances, and the X-car has not been shown to have any peculiar propensity to lock up, rear or front, more frequently than cars generally. Moreover, it also appears that every previous case litigated to a final decision under the Act involved a clearly identified broken or separated part causally connected to an uncontroverted and significant deviation from intended and expected vehicle performance.[50] The defendant-manufacturers relied upon various affirmative defenses rather than general denials that their vehicles were defective at all.

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[49] The court of appeals reversed a summary judgment for the government, holding that even where a significant number of functional failures was admitted, it would still be open to the manufacturer to establish that the failures were attributable to unforeseeable misuse of the product or other owner fault rather than a product deficiency. *Wheels*, 518 F.2d at 427, 438. The court also held that for components whose useful life is less than that of the vehicle as a whole, the government would still retain the burden of negating "causes like age and expected wear and tear" for the functional failures. *Id.* at 438. It did not address the situation in which extrinsic causes, i.e., those without the control of either the manufacturer or owner/driver, were as likely as mechanical malfunction to be responsible for less-than-optimum vehicle performance, although it did make clear that substandard performance alone would not suffice to support a finding of the existence of a "defect." *Id.* at 437-38.

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[50] In Wheels, the manufacturer admitted that broken wheels were "failures" but contested whether the breakage was due to vehicle or driver fault. In United States v. General Motors Corp., 561 F.2d 923, 924 (D.C. Cir. 1977) ("Pitman Arms"), cert. denied, 434 U.S. 1033 (1978), the manufacturer disputed whether broken pitman arm steering failures caused an unreasonable risk of accidents. In United States v. General [illegible]rp., 565 F.2d 754 (D.C. Cir. 1977) ("Carburetors"), the manufacturer disputed whether the number of engine fires which would be anticipated as a result of dislodged carburetor fuel plugs was significant and an unreasonable risk; it conceded that dislodged carburetor plugs were failures. In United States v. Ford Motor Co., 421 F. Supp. 1239, 1242 (D.D.C. 1976), ("Seatbacks")affirmed in part, appeal dismissed in part as moot, 574 F.2d 534 (D.C. Cir. 1978), the manufacturer made a similar argument with respect to collapsed seatback brackets. And in United States v. Ford Motor Co., 453 F. Supp. 1240 (D.D.C. 1978) ("Wipers"), the manufacturer admitted that detachments of windshield wipers from their pivot assemblies were failures, but contested whether their frequency of occurrence was significant and whether it presented an unreasonable risk.

Compare Center for Auto Safety, Inc. v. Lewis, 685 F.2d 656 (D.C. Cir. 1982) ("Transmissions"), in which the court of appeals approved settlement of a case in which the manufacturer denied the defect and NHTSA was unable to establish a vehicle-oriented reason to explain why automatic transmissions would occasionally and unexpectedly slip from "park" to "reverse."

The government's position here is essentially as follows: (1) a failure of the vehicle simply to perform as expected is a "defect;" (2) consumer experiences alone are sufficient to prove performance failure; and (3) the government is not required to come forward with an "engineering explanation" for that failure of performance. For that formulation it cites the Wheels and Pitman Arms cases, noting that the majority in Pitman Arms declined to join Judge Leventhal in an opinion which assumed an obligation on both sides to offer technical proof for their positions. Moreover, according to the government, the comparative performance of peer cars is irrelevant (again citing Wheels). That a manufacturer has built to the "state of the art" is no defense if there are a significant number of failures to perform as expected. The only defense, according to the government, is "gross vehicle abuse" by the owner.[51]

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[51] The government appears to have begun this case on the surmise that GM had, intentionally or inadvertently, designed the X-car to be rear biased. When it became clear that GM's design philosophy was one of ideal balance, NHTSA proceeded to examine the various brake system components and their interaction to determine how they might cause X-cars to become rear biased, intermittently or permanently, over time. Then, confronted with the evidence that the X-car does not, generically, either originate with or develop more rear bias than its competitors, near the close of the case NHTSA was obliged to acknowledge that it was without an "engineering explanation" for the erratic performance reported to it by the complainant-consumers.

The closest the government comes to a description of the etiology of the phenomenon described by consumers is that X-cars (or some of them, at least) must become significantly rear-biased "in service" on the road, a progression which may be attributable

". In *Wheels*, however, the court of appeals declared that it was the agency's obligation to demonstrate that *failures* had occurred, not merely that consumers had complained. *Wheels*, 518 F.2d at 427. It noted that whether "a defect exists in a particular case thus turns on the nature of the component involved," *id.*, and required that the agency offer "competent evidence showing a significant number of failures." *Id.* at 442.

The Court concludes that anecdotal accounts of skidding events are not sufficiently reliable, i.e., are not competent evidence from which to infer the existence of any specific brak. problem. The driver of a car simply cannot gauge its brake balance as it decelerates, even in the grossest sense. The knowledge necessary to discern, let alone calculate or quantify, brake balance or brake efficiency is lacking, even if the witness' recollection is meticulously accurate, factual not fanciful, and truthfully related. Drivers can describe only what happened to them, which is an altogether insufficient basis upon which to make a judgment as to the technical adequacy of the

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in unspecified proportions to: (1) a decline in front brake effectiveness over time; (2) increase in rear brake effectiveness over time; (3) parking brake "drag;" and (4) the use of a duo servo brake mechanism on the rear axle. It has also, over the course of the case, at various times suggested that the proportioning valve, "aggressive" rear brake linings, non-finned rear brake drums, the power booster system, and front brake pin corrosion are implicated.

Ultimately, however, the government insists that it is not obliged to explain the consumers' mishaps; it is enough if a sufficient number of them actually happened.

braking system of their cars, especially when, as here, the testimony is of skidding incidents which occurred sporadically months or years apart.[52]

Those courts which, in other contexts, have allowed proof of vehicle defects to be made by circumstantial evidence of a loss of vehicle control have done so only with respect to a single vehicle involved in one misadventure, and have also required that other conditions analogous to those which precede the invocation of the doctrine of *res ipsa loquitur* be present: (1) the evidence must demonstrate an unusual event unlikely to occur with a fully functional car; (2) the occurrence must be inconsistent with causes other than vehicle malfunction, and, thus, admit of only one reasonable inference; and (3) the inference must not be contradicted by direct evidence to the contrary. *See*, *e.g.*, *Brothers* v. *General Motors Corp.*, 202 Mont. 477, 658 P.2d 1108 (1983); *Stewart* v. *Ford Motor Co.*, 553 F.2d 130 (D.C. Cir. 1977). The drivers' several descriptions of their incidents of skidding and yaw in this case satisfy, at best, only the first of these conditions, and yet the government would have the Court draw the inference not only that each and every one of them was exclusively attributable to the same systemic brake defect, but also that an entire generation of automobiles must necessarily be similarly afflicted.

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[52] Numerous courts have expressed doubt that skidding alone is probative of a defective vehicle. *See*, *e.g.*, *Zidek* v. *General Motors Corp.*, 66 Ill. App. 3d 982, 384 N.E.2d 509 (1978); *Woods* v. *General Motors Corp.*, 423 So.2d 112 (La. Ct. App. 1982); *Provence* v. *Williams*, 62 Tenn. App. 371, 462 S.W.2d 885 (Ct. App. 1970).

The evidence here, on the other hand, conclusively establishes that skid-and-yaw can and does result from, in addition to brake imbalance, differential road friction, road camber or slope, curved paths of travel, worn, underinflated, or mismatched tires, driver steering inputs, combined braking and cornering, and lane change maneuvers, for none of which the car's braking system can be held responsible. That some of NHTSA's consumers' motoring experiences were "consistent with" rear brake lockup is no more diagnostic of a "defect" in their vehicles than are certain general physical symptoms experienced by humans diagnostic of any specific illness with which they may be consistent.

X.

In addition to proving the existence of a vehicle defect under the Act, the government must also prove that any resulting performance failure relates to motor vehicle safety, that is, it presents an unreasonable risk of accidents or injuries. 15 U.S.C. §§ 1391(1), 1411; Wheels, 518 F.2d at 426, 435. The government once again tenders the per curiam decision in Pitman Arms, 561 F.2d 923, as establishing a per se rule: any vehicle-endogenous reason for a diminution of the driver's control capabilities poses an "unreasonable" risk as a matter of law. Since rear brake lockup, when it occurs, results in at least a partial loss of control, the government contends that it satisfies the statutory requirement of safety-relatedness for a mandatory recall and repair.

Re-examination of the Wheels decision, and a review of subsequent decisions in analogous contexts under other federal safety legislation, however, persuade the Court that Wheels and Pitman Arms should not be read today as establishing a rigid rule turning entirely upon a diminution of control in the abstract. The unreasonableness of any risk to safety must be assessed relatively in at least three dimensions: (1) the severity of the harm it threatens; (2) the frequency with which that harm occurs in the threatened population relative to its incidence in the general population; and (3) the economic, social, and safety consequences of reducing the risk to a so-called "reasonable" level. See Industrial Union Department, AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980) (plurality opinion) ("Benzene"); American Textile Manufacturers Institute, Inc. v. Donovan, 452 U.S. 490 (1981) ("Cotton Dust"); Center for Auto Safety v. Peck, 751 F.2d 1336 (D.C. Cir. 1985) ("Bumpers").

In Wheels, the district court had held that a large number of performance "failures" constituted irrebuttable proof of the presence of a statutory "defect" regardless of the cause of those failures. 518 F.2d at 436. The court of appeals reversed, on the ground that a manufacturer is not required to remedy even a large number of failures if their cause is a factor like age, wear, or unanticipated abuse, i.e., causes not inhering in imperfections in the vehicle as manufactured. 518 F.2d at 436. And since courts are to consider costs in addressing the question of "unreasonable risk," they are likewise to consider those same costs in addressing the question of "defect." 518 F.2d at 435. In other words, a manufacturer is not expected to build a vehicle that will never fail, no matter the cost. 518 F.2d at 435-36. Manufacturers are not obliged "to use tires that do not wear out, lights that never burn out, and brakes that do not need adjusting or relining." 518 F.2d at 436.

This implicit recognition in Wheels of a relative, rather than absolute, risk as the statutory measure of a manufacturer's duty to repair was expressly articulated in the court of appeals' recent opinion in the Bumpers case, in which the D.C. Circuit upheld NHTSA's decision to relax an impact-resistance standard for vehicle bumpers. Acknowledging that the action entailed some increase in risk to the public, the court nevertheless interpreted the Act as requiring NHTSA to regulate only as to "significant risks." 751 F.2d at 1344 n.5, 1345, 1348. An "insignificant risk" was per se reasonable, regardless of the costs associated with the remedy:

> "The principle that an 'unreasonable risk' provision requires even insignificant risks to be eliminated if that can be done at (presumably) insignificant cost would turn many areas of regulation into unending pursuit of the trivial."

Id. at 1344 n.5 The court declared that the Act was not directed "toward any conceivable safety hazard, no matter how insignificant; rather, the Act is directed at 'unreasonable' risks." Id. at 1345 (citation omitted). In interpreting the "unreasonable risk" formulation of the Act to refer to those of "significance," the court of appeals was following the lead of the Supreme Court in Benzene and Cotton Dust in incorporating the concept of "significant risk" into an interpretation of other federal safety legislation.

Only when the risk appears "significant," based both on severity and relative frequency factors, does it become necessary to proceed to a "'common-sense' balancing of safety benefits and economic cost." Wheels, 518 F.2d at 435 (footnote omitted). In other words, a significant risk that can be remedied at a proportionate cost, and without a corresponding sacrifice of public safety in other respects, is generally to be regarded as an "unreasonable risk" which the Act mandates that the manufacturer must rectify. See Bumpers, 751 F.2d at 1344 n.5;

Wheels, 518 F.2d at 435-36. Conversely, if the only "remedies" are ineffective, prohibitively expensive, or affirmatively detrimental to public safety, even a significant risk may nevertheless be "reasonable" as a matter of law. Id.

Any skid, of course, involves some loss of control and is, thus, potentially hazardous. Assuming GM could render every X-car so front biased that its rear wheels would never lock, however, the relative severity of the risks associated with front brake lockup, rear brake lockup, and four-wheel lockup are both debatable and unresolvable on this record. The severity of the risks associated with rear brake lockup are ameliorated by the potential for shorter stopping distances (or at least lower speeds at impact) than with fronts locked, and NHTSA's prior positions in rulemaking suggest that, but for the necessity of contending otherwise in this case, it agrees that shorter stopping distances and slower speeds in collision do, in fact, reduce the risk of accidents and injury. Thus, the risk of loss of control with rear brake lockup may or may not be more severe than the consequences of a front brake lockup. The government, however, has failed to prove to this Court's satisfaction that it is.

With respect to the frequency with which the risk (of accidents and injuries) is encountered in X-cars with their brakes as presently configured, GM's risk analysis evidence demonstrates that the likelihood of involvement in a skidding accident is no higher, and as a rule is lower, for the 1980 X-car population than for the automobile population at large. If there truly is a relationship between brake bias and the frequency with which skid-related accidents are threatened, the results of the risk analysis are explained by the engineering measurements of brake efficiencies showing that the 1980 X-cars are, as a group, already less rear biased, and thus less susceptible to rear brake lockup than are most of their competitors. The evidence thus precludes a finding of "significance" in the frequency sense of the term "unreasonable risk."

Because the government has not established that the X-car braking system represents an unreasonable risk of accidents and injuries of "significance" in either the severity or frequency parameters, it is perhaps unnecessary to comment upon the safety benefits/detriments of the proposed "remedy" to determine whether it might also entail "unreasonable" risk. Benzene, 448 U.S. at 634-42; Bumpers, 751 F.2d at 1344 n.5. But the somewhat amorphous remedy NHTSA submits would be appropriate - it resists being committed to specific recommendations - has substantial safety implications of its own, unlike the remedies appropriate in prior cases under the Act, viz., to replace or repair an offending part with absolutely no corresponding negative impact upon public safety. NHTSA suggests generally that the appropriate remedy here is to assure that the X-car population is still more front biased, leaving to GM the manner in which it is to be accomplished.[53] However, the engineering tests have shown that current configuration X-cars, at least those tested by both sides, already exhibit front bias or nearly ideal brake balance in the lightly loaded condition and are fully front biased in the heavily loaded condition. Shifting the brake balance toward more front bias would actually move the cars farther from the ideal in all loading conditions, the result being, as previously noted, to render them prone to earlier front lock, skidding incidents with longer stopping distances, and the control losses associated with front skids.

For all of the foregoing reasons, therefore, the Court concludes the government has failed to meet its burden of showing that current configuration 1980 X-cars now present, or have ever presented, an "unreasonable risk" of accidents due to a "defect" that causes "premature rear brake lockup," and Counts I and II will be dismissed with prejudice.

Counts III and IV allege that GM failed to comply with § 1414 of the Act in connection with its 1981 and 1983 recall campaigns. Count III charges that in July (i.e., August), 1981, GM "knowingly conducted an inadequate recall campaign" of some

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[53] In closing argument government counsel suggested that retrofitting 1980 X-cars with a new generation of GM semi-metallic front brake linings, known as 8034/8035's, might be appropriate.

47,000 manual transmission 1980 X-cars originally equipped with 41% proportioner valves which were to be replaced with 27% valves. Count IV makes similar allegations with respect to the February (i.e., March), 1983, recall of approximately 240,000 1980 X-cars to replace their original brake linings with the less "aggressive" 4050/4050 variety.

Implicit in the Court's conclusion that current-configuration 1980 X-cars do not possess a safety-related defect is the corollary that whatever deficiencies some earlier incarnations of them may have exhibited have been adequately remedied, and GM is under no present duty to take further action. Section 1414 of the Act provides, in pertinent part:

> "(a)(1) *If notification is required under section 1411 of this title or by an order under section 1412(b) of this title* . . . then the manufacturer . . . shall cause such defect or failure to comply in such motor vehicle . . . to be remedied without charge." (Emphasis added)

Recall is, thus, expressly contingent upon the existence of a safety-related defect giving rise to a duty to notify and repair.

The court of appeals previously stated in a case that followed upon completed administrative proceedings before NHTSA, " t he plain meaning of this language in § 1414(a)(1) is that a determination and order under section 1412(b) are prerequisites to the remedy obligations under section 1414(a)(1) . . . . Absent a section 1412(b) determination and order section 1414 does not apply. . . ." Transmissions, 685 F.2d at 662. Since administrative proceedings in this case were aborted by the government in favor of an immediate resort to federal court, by analogy only knowledge on the part of GM that its 1980 X-cars were defective, and that the defect was safety-related, would have raised a duty under § 1411 to recall and repair. GM has never conceded, however, that its vehicles are defective. It acceded to NHTSA's insistent, if informal, demands that it take some action, and, over protest, voluntarily elected to conduct both the 1981 and 1983 recalls for business reasons: to avoid costly and prolonged litigation in 1981, and, following NHTSA's "initial determination" in 1983, to placate consumers aroused by the attendant adverse nationwide publicity.

Had the extensive engineering testing succeeded in isolating an idiosyncrasy in the X-car's braking system to explain the extraordinary number of consumer complaints about it, or had the accident statistics demonstrated an abnormally elevated incidence of X-car involvement in the sorts of accidents likely to occur as a result of the systemic malfunction NHTSA suspected, then the internal GM documents might supply convincing corroboration of GM's knowledge of the "defect" from the outset. As it is, without proof that there is, or ever was, a "defect," they prove only that brake engineers have yet to devise the infallible braking system, and that GM's engineers, as well as their counterparts elsewhere in the industry, continue in quest of it, and also continue to argue, sometimes heatedly, about how its imperfect substitute should work in the meantime. Counts III and IV will likewise be dismissed.

Count VI alleges that GM failed to advise owners of those 1980 X-cars recalled in July/August, 1981, of NHTSA's toll-free "Auto Safety Hotline" telephone number by which owners dissatisfied with a manufacturer's efforts to remedy a defect may notify NHTSA to that effect.[54] The regulation, 49 C.F.R. § 577.5(g)(1)(vii) (1981), adopted by NHTSA in January, 1981, 46 Fed. Reg. 6971 (1981), required that it be done in appropriate cases, and it is undisputed that GM did not do so. The Court is unpersuaded by the reasons GM gives for not doing so, viz., that the regulation was invalidly adopted without notice and comment, and that NHTSA had never before enforced it anyway, but, as with the duty to recall and remedy itself, the duty to give notification thereof in the form prescribed by NHTSA is subject to the same precondition: that the manufacturer has or should have determined that the vehicle "contains a defect which relates to motor vehicle safety." 49 C.F.R. § 577.5(a). Having previously concluded that the proof fails to establish that the 1980 X-cars were defective, or that GM had or should have determined that they were, the Court further concludes that GM was legally a volunteer in making both recalls, and that neither notification was, therefore, required to conform to any particular form. Count VI, too, will be dismissed.

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[54] GM's February/March, 1983, recall notification did include the "hotline" number.

It is, therefore, this 14th day of April, 1987,

ORDERED, that judgment be entered for defendant General Motors on Counts I, II, III, IV, and VI of the complaint, and the same are dismissed with prejudice.[55]

Thomas Penfield Jackson
U.S. District Judge

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[55] Despite GM's belief that NHTSA acted with less than worthy motives, the Court finds that the United States was justified in commencing this action as precipitously as it did. While the true reasons for the X-car's unusually high pre-publicity complaint rate may never be known, the prospect of leaving an entire generation of unpredictably uncontrollable mass-produced automobiles on the nation's highways while NHTSA worked to determine the cause was sufficiently alarming to induce it to abandon the administrative proceedings in favor of an immediate lawsuit. Nevertheless, the consequence was to propel an archetypal case for agency adjudication to court without benefit of a fully developed administrative record, and hasten it to an early trial before discovery could refine the issues. The government came into court with nothing more, essentially, than a reasonable suspicion, without the evidence to prove it. Perhaps it expected GM to capitulate once more, and, if not, sooner or later the evidence confirming its suspicion would materialize. Neither happened, and this decision is the result. Whether time has actually been saved, or the disposition achieved the proper one, are debatable.

Mr. **Florio**. Let us thank you very much for your very articulate presentation of your philosophy with regard to the whole role the Government should play in this particular area. I think that is certainly the view that you have taken, which apparently represents a minority on the committee you serve on that has apparently in some depth gone into this issue.

Likewise, I respect your thoughts that the Commission has somehow been too activist. I think we are probably going to hear from others today who are not prepared to say the Commission has been sufficiently activist, and of course, that is the purpose of these hearings, to hear from both sides.

I guess my substantive comment is I'm not sure it is a valid approach to be saying that action in a particular area is inappropriate because there could be other areas where it is more desirable to take action—the reference you have made to the difference between injuries and deaths on snow mobiles and road bikes versus the subject we are talking about today.

The fact is and apparently it is undisputed, that in the last 4 or 5 years, 700 people have been killed, hundreds of thousands of people have been injured and we are talking about a substantial number of those people being young people. I think that is deserving of this committee's scrutiny, to see if the Agency that is set up under the law for reviewing safety of products is in fact following through in this particular regard. As I said, the suggestions that some will make that the Agency has not been as vigorous as it could be, particularly to be contrasted with your analysis that the Agency has been somehow a rogue agency intervening in the marketplace, certainly that is an interesting contrast and perception as to what the companies are doing.

Are you offended by the suggestion that the Agency has made, that there should be a voluntary recall opportunity at the option of the consumer? How would that be offensive to the rights of the consumers if consumers themselves decide to exercise the right that the Agency would give to them under their proposal?

Mr. **Craig**. If the factual information, not the philosophical bias, Mr. Chairman, substantiates that kind of action, then it should also substantiate a total ban. If injuries so related to this particular product are as great as some people lead us to believe, without taking into comparison bicycles or tricycles or skateboards, then I suggest that vehicle ought to be banned from the market, but because the Consumer Product Safety Commission did not have those kinds of statistics, Mr. Chairman, it could not substantiate a total ban because, believe it or not, they have to stand the test of law as all of us in our actions must. They knew they couldn't go before the courts with the information they had and get a ban.

In my opinion, they maneuvered around, if you will, in an attempt of a recall based on a public outcry without the statistics or the facts available. Now, I think I explained in my testimony why this can be serious. Because it will force ridership on other types of vehicles by young people and it could, and I think the Commission agrees, even shove up the injuries instead of having training and educational and understanding programs that are now at work, driving the injury statistics down by 12 percent last year and 14 percent this year—all because of education and information. That's why, Mr. Chairman.

Mr. **Florio**. Thank you very much. The gentleman from California?

Mr. **Dannemeyer**. Thank you, Mr. Chairman.

You and your fellow Republicans wrote a strong dissent to the Government Operations' report. What was the CPSC response to the Committee's report?

Mr. **Craig**. To the whole Committee or to the minority view?

Mr. **Dannemeyer**. The minority view.

Mr. **Craig**. Well, in large part not much. I say that because CPSC was at that point striving for action and although the Committee recommended a ban based on faulty information that was available at that time, the CPSC went ahead for a voluntary recall.

I suggest that if the Government Operations Committee today had the information that is available today on a complete analysis of this issue, they would be very hard pressed to win the majority vote on the kind of opinion and reaction they did.

Mr. **Dannemeyer**. Did the Committee attempt to determine what the relative risk of injury or death was per hour of use for ATV's as compared to other activities, such as the use of snow mobiles or trail bikes?

Mr. **Craig**. They did not.

Mr. **Dannemeyer**. Did the CPSC testify at your Subcommittee's hearings?

Mr. **Craig**. They did.

Mr. **Dannemeyer**. Do you think the hearing and the outcome of the report influenced the CPSC Commissioners' decision?

That once the general public's opinion of this issue grew, and the Government Operations Committee had made a very strong statement, that the Commissioners of the Consumer Produce Safety Commission felt they had to do something. But their data to move to the Justice Department, to move strongly against the industry was so weak, that they would move in a lesser way, but that they would move because of the pressure that was being placed on them.

Now, that's my personal opinion based on the whole scenario of facts as I have followed them over the last 2 years.

Mr. **Florio**. The time of the gentleman has expired. The gentleman from California, Mr. Bates.

Mr. **Bates**. No questions.

Mr. **Florio**. The gentleman from Utah.

Mr. **Nielson**. Yes. Thank you, Mr. Chairman. I have an opening statement I would like to submit for the record.

Mr. **Florio**. Without objection opening statements of all the members will be put into the record.

[The opening statement of Mr. Nielson follows:]

Opening Statement of Hon. Howard C. Nielson

Mr. Chairman, I am pleased to have the opportunity to participate in these hearings on all-terrain vehicles. I am already familiar with some of the issues that may arise today, because the Government Operations Committee, of which I am also a member has already held hearings on this subject. I am anxious, however, to learn whether there have been any significant new developments.

My general impression is that these vehicles are used safely by millions of Americans and that thousands of American workers are employed in businesses related to this product. I understand that many Americans enjoy riding ATV's and that both Government agencies and private businesses have found these vehicles useful. For instance, ATV's have been used by police patrols and park rangers on life-saving rescue missions. I also understand, however, that safety concerns have been raised because some ATV riders have been injured, and I would applaud any steps that can be taken to promote safety, however, I feel that these concerns should be addressed at the State level and not by a Federally mandated ban.

ATV's are a product that some people would not choose to buy or ride. That fact, however, should not lead us to prevent others from their freedom of choice. I believe it is important for citizens to have complete and balanced information about ATV's and other consumer products. Armed with that information, I am confident that the American public is better able to decide what is best for it than are those of us here in Washington. Let us protect freedom of choice for the American public by allowing it to decided for itself whether or not to use all-terrain vehicles. Thank you.

Mr. Nielson. I'm a signatory to that, the report on the Government Operations Committee, for the record.

Did they not in fact—didn't Chairman Scanlon of CPSC write a letter, write a note talking about the inaccuracies in the Government Operations' report?

Mr. Craig. That is correct.

Mr. Nielson. So, they did respond.

Mr. Craig. Well, yes. And I must say, I do not recall. And I've got the letter here in front of me, I just simply didn't have it. Yes, they did respond as it related to some of those inaccuracies.

Mr. Nielson. And as a matter of fact the response strengthened your point of view, did it not?

Mr. Craig. Oh, it very much did because, out of it, and out of my prying, Mr. Nielson, came what is now known as the Verhalen Report. Dr. Verhalen is a specialist in epidemiology, and looks at the broad-based problems. And he was very clear in saying that CPSC was an area that they did not go in and do the comparative studies. They could not make the case they were making unless they effectively did the comparative studies. And I have that memorandum, Mr. Chairman. And I think it's critical for this committee's information that that be available and entered into the record.

Now, it's interesting. I'll show the committee, it was stamped restricted. It was held back by the Commission itself. We pried it out finally, and then, yes, it came public, simply because it is very damning by their own experts saying, you've got to do it right if you do it; and you haven't done it right; and therefore, you can't make your case because your case won't hold up in court.

Mr. Nielson. Congressman, I understand you are a consumer of these vehicles yourself; is that correct?

Mr. Craig. Yes. I have ridden and worn out several of them in my farming and ranching operation before I came to Congress. I will tell you that as an experienced bike rider that the first time I got on a three-wheeled ATV I ended up off the road and out in the middle of a field not knowing how I got there.

Now, I say that because I was inexperienced. And I learned very quickly, and later when I put my children on them, I stayed with those children until they learned that this vehicle, like all other motion related vehicles, is different in its own characteristics. That's not instability; ATV's are unique as is true of snow mobiles, and I've ridden a lot of snow mobiles, and a lot of bikes, motor bikes and that kind of thing—usually in the course of our ranching and farming business, where we use them as tools.

But I can tell you that they are no less safe than anything else. And I have had my own children more injured on tipping over their bicycles on sidewalks than I have in riding these ATV's because I wasn't worried about the bicycle, I didn't think they could get hurt on it. But when they straddled an ATV, on went the helmet, and I stayed with them for hours getting them in tune with the machine, so they in fact became a part of it and became the stabilizing factors, as true of all operator vehicles.

Mr. **Nielson**. No further questions.

Mr. **Florio**. The time of the gentleman has expired. The gentleman from Ohio.

Mr. **Eckart**. No questions.

Mr. **Florio**. Thank you very much, we appreciate your participation.

Mr. **Nielson**. Mr. Chairman, was this letter CPSC entered into the record, to the Government Operations Committee. A letter to Congressman Barnard, Chairman of the Government Operations Committee.

Mr. **Florio**. Would the gentleman like to make that request.

Mr. **Nielson**. I would like the request to be made.

Mr. **Florio**. Without objection so ordered.

[The following letter with attachments follows:]

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D C 20207

The Chairman

November 10, 1986

The Honorable Doug Barnard, Jr.
Chairman
Commerce, Consumer, and Monetary
  Affairs Subcommittee of the
Committee on Government Operations
B-377 Rayburn House Office Building
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in further response to your letter of September 17, 1986, as promised in my interim reply of September 23. Your letter asked for an analysis of any inaccuracies in the House Government Operations Committee Report, "Consumer Product Safety Commission's Response to Hazards of Three-Wheel All-Terrain Vehicles (ATV's)."

This response was necessarily delayed until the September 30, 1986, ATV Task Force report, which summarized the nearly 18-month study of the technical issues, was prepared and forwarded to the Commission, as well as to await receipt of an analysis of this report by our outside experts.

Enclosed is a report from the CPSC ATV Task Force Chairman regarding the findings of the Government Operations Committee report.

Please feel free to call me if you have any additional questions.

Sincerely,

Terrence Scanlon
Chairman

Enclosure

cc: The Honorable Larry E. Craig
    Ranking Minority Member

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

7 NOV 1986

TO: Leonard DeFiore, Executive Director

FROM: Nick Marchica, Chairman, All-Terrain Vehicle (ATV) Task Force

SUBJECT: September 17, 1986 Letter from Congressman Barnard

On September 17, 1986, Congressman Barnard, Chairman of the Commerce, Consumer and Monetary Affairs Subcommittee of the House Committee on Government Operations, requested of the Chairman an analysis of any inaccuracies and misinterpretations found by CPSC technical staff in the Government Operations Committee's July 16, 1986 report entitled, "Consumer Product Safety Commission's Response to Hazards of Three-Wheel All-Terrain Vehicles (ATVs)." This request was in response to a letter from Chairman Scanlon to Congressman Barnard dated August 1, 1986, in which he stated that CPSC technical staff believes that the Committee Report contains inaccuracies and misinterpretations of data.

The ATV Task Force established by the Commission has successfully completed its assigned tasks within the schedule set by the Commission. The "Report of the CPSC All-Terrain Vehicle (ATV) Task Force: Regulatory Options for All-Terrain Vehicles" and the 12,000 page ATV Technical Package prepared by the Task Force have been provided to Congressman Barnard's Subcommittee per his request of September 17, 1986. In his letter, Congressman Barnard states that the Government Operations Committee report "relies almost entirely on data prepared by the CPSC staff, as reflected in the Advance Notice of Proposed Rulemaking published in May 1985, and on other Commission documents." He further stated that "If the Commission has changed any of its findings and conclusions since that time, or has found any of its previous documents or information releases to be inaccurate, the Subcommittee and the public should be so informed, together with the data upon which such changes are based."

In the 5/31/85 Advance Notice of Proposed Rulemaking (ANPR), the Commission *preliminarily* determined that there *may* be an unreasonable risk of injury associated with the use of ATVs which may be sufficiently severe to require regulatory action by the Commission (emphasis added). The Commission adopted an action plan intended to assist it in obtaining further information on the hazards associated with ATVs. The ANPR clearly states that the preliminary determination of unreasonable risk was based on available data, that further information on the hazard was needed, and that public comment on the data in the ANPR and the ATV safety issue generally was requested.

Major Areas Of Concern

There are two major areas of concern about the Committee's report. First, the Commission did not have the data required for a determination of the relative risk of injury or death nor an analysis of ATV accidents by initial event and sequence of events prior to the release of the September 1986 Hazard Analysis. This critical information is needed to develop remedial strategies.

As indicated in the Hazard Analysis, some of the most significant high risk factors in accidents resulting in injuries and deaths on 3- or 4-wheeled ATVs were drivers under 16 years of age on adult-sized ATVs (particularly drivers 14 to 15 years old), ATVs with larger engines (225 ccd or more) which represented the majority of ATVs with front and rear suspensions, and driver inexperience. The relative risk for drivers with less than one month of experience was 13 times the average.

Other high risk factors were not previously known to the Commission. For example, when a helmet was not worn, the relative risk of a fatal or hospitalized head injury was three times as high and the relative risk of an emergency room treated head injury was twice as high as when the injured person wore a helmet. The estimated probability of an accident with a four-wheeled vehicle was roughly half the probability of an accident with a three-wheeled unit. The annual risk of death was the same for both three- and four-wheeled ATVs.

The analysis of ATV accidents by initial event and sequence of events also was not known to the Commission prior to the release of the September 1986 Hazard Analysis. A major difference in accident scenarios between three- and four-wheeled ATVs involved the percentage of ATVs that overturned (or tipped): 74% of the three-wheeled ATVs compared to 59% of the four-wheeled ATVs. This finding corroborated engineering conclusions that the dynamic stability of a four-wheeled ATV is better than that of a three-wheeled ATV.

Second, the Committee focused its attention solely on three-wheeled ATVs, and did not make any findings or recommendations relative to four-wheeled ATVs. However, the injury and death figures cited in the Committee's report include three- and four-wheeled ATV data. For example, of the 415 ATV related deaths cited in the report, four-wheeled ATVs were reported in 26 of the 174 incidents in 1985 (and in 10 of the 241 incidents in prior years). Also, the December 1985 "Preliminary Report on the Survey of All-Terrain Vehicle Related Injuries" (1985) found that 87 percent of the ATVs involved in injuries had three wheels and 13 percent had four wheels. In the Chairman's August 1, 1986 letter he said the ATV Task Force was evaluating the performance characteristics of both types of vehicles and that until these data are analyzed there was no factual basis for the Committee to assume that one type of vehicle was safer than the other.

Additional ATV Task Force Comments

The report also states that there are "a disproportionately large number of spinal cord injuries resulting in victims becoming paraplegics and quadraplegics." The location of this statement appears to attribute it to CPSC data. The National Electronic Injury Surveillance System (NEISS) data do not show this, nor does a recent medical review of indepth investigations. None of the data available to the staff at this time allow us to determine whether or not the number of spinal cord injuries is disproportionate to other injuries.

On page 29 of the Committee report, total sales were projected at 780,000 for 1985. This figure was from the ANPR. However, in Economic Analysis's Market Sketch (December 1985), 1985 shipments were estimated at 575,000 to 625,000. The actual figure turned out to be about 595,000.

Additional Staff Comments

Because of the large amount of emphasis on ATV Injury Epidemiology the Associate Executive Director for Epidemiology, Dr. Robert Verhalen, has provided specific comments on the Committee's report. Keyed to specific pages of the report are some of Dr. Verhalen's observations.

> "(Page 1)
> Twice on this page, and at several other locations throughout the document, the report refers to the unprecedented level of deaths and injuries associated with ATVs.
>
> The deaths and injuries are not at all unprecedented. Skateboards, for example, over the four year period 1974-77 virtually 'exploded' from under 4,000 injuries per year to about 155,000 injuries per year. Bicycles are typically reported to be associated with well beyond a half million injuries each year. While deaths reportedly associated with skateboards during the above mentioned period only numbered about 25, deaths associated with a number of other products usually run considerably higher than are reported for ATVs. For example, during the same four year period covered by the ATV report (1982-85), swimming pools were involved in more than 2,700 deaths, bathtubs and showers were involved in nearly 1,700 deaths, mobile homes were involved in nearly 1,500 deaths, and bicycles were involved in almost 3,600 deaths--to mention only a few other products.
>
> (page #3)
>
> Beginning at the bottom of page 2 and continuing at the top of page 3, the report argues that ATV related injuries are 'substantially higher than proportionate figures for minibikes/trail bikes and snowmobiles.' This is precisely the sort of misinterpretation which I was trying to correct with

my June 13, 1986 memo. The authors of the report have interpreted the data presented in the ANPR at face value, failing to recognize or give credence to earlier caveats about the non-comparability of the data---.

Proportionate figures... would be those which take into account some common factor which would make them comparable, such as a rate of incidents per some meaningful unit, such as exposure (in hours, days, or some other index of use). This is essential if comparisons are to be reasonably made. Accordingly, injuries per 1,000 vehicles in use, adjusted for exposure (ATVs, mini/trail bikes, snowmobiles with relative exposure values of 10:2-3:1 respectively yields:

ATVs	=	4.5 per 1,000 vehicles in use
mini/trail bikes	=	7.9-11.9 per 1,000 vehicles in use
snowmobiles	=	8.5-12.7 per 1,000 vehicles in use

As I made clear in my June 13 memo, these estimates are not definitive. The empirically based, comparable exposure surveys we requested funding for could have provided what we needed for a definitive analysis. Absent that however, based on the testimony at the Commission ATV hearings, these estimates are still the best information available. Also, as I pointed out in the June 13 memo, one cannot attach any statistical significance to the above differences.

(Page #11)

In the first full paragraph on the page, the report avers that 'evidence indicates that even experience in riding does not offer any real protection since many of those injured are experienced riders.' This suggests that 'protection' must be 100% effective if it is to be considered 'real.' Almost nothing can offer 'real' protection under these terms. With respect to experience, the 13 times greater risk of injury among novices during their first month would seem to be evidence that experience does confer some protection, albeit imperfect.

(Page #13)

Item (10) dismisses the role of human error and places - virtually total blame for accidents on performance and handling characteristics. The evidence however reveals that.

- 70-80% of victims did not wear helmets, without which the relative risk of fatal or hospitalized injury was three times as great as among 'wearers.'
- Drivers of four-wheeled ATVs carrying passengers were at 20% greater relative risk of being involved in a fatal accidents.
- Drivers of three-wheeled ATVS on paved surfaces were at 150% greater relative risk of being involved in a fatal accidents.
- Roughly 17,000 (20%) of all injuries were to passengers. If these people had not been passengers, they would not have been injured.

In each of the above, while handling characteristics played a role, it was not necessarily the definitive role. Clearly the "conduct" of the driver in terms of his decisions (to not wear a helmet, to carry a passenger, to drive on a paved surface without other, non-ATV traffic) was a significant determinant. Very few accidents can be shown to have a single cause."

In Summary , since issuance of the ANPR and the Committee's Report the staff has obtained a great deal of additional technical information on this very complex safety issue. This information which will be considered by the Commission at the November 19. 1986 ATV briefing will provide a basis for Commission action and for addressing the hazards associated with ATVs.

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D C 20207

The Chairman

September 23, 1986

The Honorable Doug Barnard, Jr.
Chairman
Commerce, Consumer, and Monetary
  Affairs Subcommittee of the
Committee on Government Operations
B377 Rayburn House Office Building
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is to acknowledge receipt of your letter of September 17 asking for an analysis of any inaccuracies found by our technical staff in the Government Operations Committee's report, "Consumer Product Safety Commission's Response to Hazards of Three-Wheel All-Terrain Vehicles (ATVs)."

As you know, the ATV Task Force and all at the Commission who are involved in completion of this important study are heavily engaged in wrapping up the last-minute details of the report which is to be submitted September 30. Since this date is only a few days away, I would prefer to wait until all of the information is available before responding in detail to your most recent letter.

Please be assured that we will provide your Subcommittee a complete report from the ATV Task Force, followed by a more detailed letter from me setting forth the information requested in your September 17 letter.

With kindest regards.

Sincerely,

Terrence Scanlon
Chairman

cc: The Honorable Larry E. Craig

NINETY-NINTH CONGRESS
Congreſs of the United States
House of Representatives
COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-377
WASHINGTON, DC 20515

September 17, 1986

Hon. Terrence M. Scanlon
Chairman
Consumer Product Safety Commission
Washington, DC 20207

Dear Mr. Chairman:

In your letter to me dated August 1, 1986 concerning the Government Operations Committee's report, "Consumer Product Safety Commission's Response to Hazards of Three-Wheel All-Terrain Vehicles (ATV's)", you state: "You should be aware that our technical staff believes that the Committee Report contains inaccuracies and misinterpretations of data."

As the report makes clear, it relies almost entirely on data prepared by the CPSC staff, as reflected in the Advance Notice of Proposed Rulemaking published in May 1985, and on other Commission documents. If the Commission has changed any of its findings and conclusions since that time, or has found any of its previous documents or information releases to be inaccurate, the subcommittee and the public should be so informed, together with the data upon which such changes are based. Accordingly, please supply a written analysis of all alleged "inaccuracies and misinterpretations of data" found by the Commission's technical staff in the Committee's report.

Your August 1 letter also states that the Commission's ATV Task Force fully expects to meet its September 30 deadline. Please supply the subcommittee with a copy of any written report or other document submitted by the Task Force on its findings and recommendations as soon as it is available. Also, please supply advance notice of any Commission meeting scheduled to consider such a report.

Sincerely,

Doug Barnard, Jr.
Doug Barnard, Jr.
Chairman

DB:tjj:v

Mr. **Craig.** Thank you very much, Mr. Chairman and members of the committee for allowing me to take the time I did. Thank you.

Mr. **Florio.** Our next witness is Mrs. Gary Pleasants of Clarksburg, MD.

Ms. Pleasants, welcome to the committee. As with all of our witnesses any formal statement you have will be put into the record in its entirety and please feel free to proceed.

STATEMENT OF GARY LEIGH PLEASANTS, CLARKSBURG, MD

Mrs. **Pleasants.** My name is Gary——

Mr. **Florio.** Would you kindly pull the microphone a bit towards you.

Mrs. **Pleasants.** My name is Gary Pleasants.

Mr. **Florio.** And could you try to speak up a bit.

Mrs. **Pleasants.** My name is Gary Pleasants. On October 12, 1986 my son Billy Pleasants was injured while riding his four-wheeler in the fields on our farm. Although he was an excellent rider and very accustomed to riding through the farm, rounding up our horses, the instability of the 230 Suzuki he rode almost cost him his future, almost cost his life.

Mr. **Florio.** How old is your son?

Mrs. **Pleasants.** He's 13 now. I think that's a price too high for any child to pay for riding a toy. Billy's accident wasn't the first on our farm. My husband accidentally hit the throttle with his knee and found himself running into a tree. This was because my husband allowed my 5-year old son to sit on the back of the machine while he clipped through the trees making a path for the children to ride on our farm.

When my husband straddled the machine a second time, his knee hit the throttle and the weight, and I guess the position of my husband on the bike, put him backwards on the machine that it did a—really just without him knowing it was going to happen, he ran into the tree and the machine landed on my little child's foot and ankle. He wasn't seriously injured and we were kind of afraid that he might have a broken foot, but it was nothing serious.

The second accident occurred when my brother-in-law, he has rode motorcycles, I guess, most of his life and he's an older person, grabbed the hand brakes in the front, and went under the handlebars and landed on his back and he missed a week of work; and he was in great pain.

If this machine—if the machine was safe, I would ride it.

In February of 1985 we bought my husband a Suzuki. We were going to use it to—it's a 250 model of a Suzuki—we were going to use it to carry hay and water to the horses on the farm, and there was no reason for us to believe that that would be dangerous at the time.

Then, in March 1985 my son wanted to buy one, so we allowed him to work off money and buy it for himself. And he bought the 230 that he had the accident on.

And then, in May 1985 I bought a Kawasaki 300 Bayou, which is a much larger machine, it's much more stable. And I really love this machine, and I have no intention of letting anybody buy that.

But I do feel helpless and a desire to warn other parents about the danger of this machine. I mean, my children don't ride at this time, I'm just afraid for their safety because I don't know what will happen when they go to someone else's home. We live out in a farm area, and so many children ride these bikes. And it isn't a customary practice for parents to watch their children on these bikes. They look so safe, and most parents don't ride them, and they do train their children to ride them. And then the child gets the keys, and they can get the keys—they keep their own keys.

And like in Billy's accident, I wasn't even at home when he had the accident. I couldn't be there to stop him. And this is something that is sitting in the driveway. It's not like you go to the park and you rent one, and you're there with your child. This thing is sitting there. And yet, it's not like a car. Your child may know that he better not ever get in your Porsche and drive it down the driveway, all right. But that toy that belongs to him, he's going to ride it whenever he wants. I mean, it's going to happen.

I just don't feel like the financial burden that the wrecks and accidents that our children are going to have, I don't feel like it's fair for our grandchildren to have to pay for these people to live the rest of their life.

My son Billy's accident caused him to—he had a brain injury in the back of his neck that—it's where the muscles and the nerve endings carry his messages to his brain cells. And he almost died twice in the helicopter on the way to the hospital. He was in—he had two grand mall seizures, and they had to totally paralyze him and force oxygen into his brain. And we didn't know for 4 days—I didn't know—you stand over the child's bed and you don't know if when they remove that machine if that child will breathe again. And you don't know if he'll walk or talk or if he can see you or hear you. You don't know if they're going to be mentally retarded for the rest of their life.

I mean, this is something that children can't decide. And I love this—I like this machine. I'm not selling my back, all right. But the fact that I know that it's so dangerous keeps me off of it. It's sitting in the garage. Its been sitting there for probably 1 year or better. And I'm just afraid to get on it. I know myself too well, if I get on that machine I'm going to approach it just like any perfect safety conscious adult, and I'm going to make a few circles and I'm going to go around the farm, and pretty soon I'm going to go just a little bit faster, a little bit faster, and I'm going to be just like any child, I'm immortal, it can't happen to me, I'm not ever going to die. And you just push it to the limit.

Children are going—it's like being in a new car, and every teenager is going to probably push that car to the limit. So, a smaller child is surely not going to have the knowledge to stop doing that; they're going to push.

It's just unfair to put them on the machine.

[Mrs. Pleasants' prepared statement follows:]

STATEMENT OF GARY LEIGH PLEASANTS

My name is Gary Leigh Pleasants. On October 12, 1986, my son, Billy Pleasants was injured while riding his four wheeler in the fields on our farm. Although he was an excellent rider, and very accustomed to riding through the farm rounding up our horses, the instability of the 230 Suzuki he rode almost cost him all future hope for any child to pay for riding a toy.

Billy's accident wasn't the first on our farm. My husband accidently hit the throttle with his knee and found himself running into a tree. This was caused by having my 5 year old sitting on the back. Donnie just strattled the machine and it tilted to the rear, shooting forward into a tree 10 feet ahead of them. David's ankle was wedged between the ATV and the ground.

The second accident occurred when my brother-in-law grabbed the front brakes and fell in front of the machine landing on his back. He lost a week of work in great pain.

If this machine were safe, I would be the first to enjoy its use. However, my Kawasaki Bayou has found a home in a corner of my garage and may sit there for many more years. I felt safer on the bayou because of its great size and rear differential. I want to ride the 300, but I know myself too well.

Like all children, I approach the ATV as a safe rider. After a few circles, I suddenly become immortal. After all if couldn't happen to me.

My bottom line is to ask for Government intervention. Protect our children from machines which never should have been put on the market with inferior design. Protect them from advertisement which makes a life threatening machine look harmless to all parents. Enforce the use of helmets. Make training and licensing a must. Our children would be safer on the interstates in cars with their friends along than turned loose day after day with a machine so likely to cause bodily harm.

Billy's helmet probably saved his life—the life almost lost twice in the helicopter on the way to Children's Hospital. Speed was involved and probably caused the machine to leave the ground as it hit a dip in the field and sailed about 50 feet before touching down first on its front wheels, then jamming Billy's head into the ground, rolling over with him still holding the handlebars and then having a rear tire leave a skid mark on his helmet as it twisted it around on his face. The helmet left scratches on both sides of his neck and a slight bruise from his mouth down along his chin, but it probably prevented his brain from receiving even greater stress. There was no fractured bones in his skull. His wrist had a broken growth platelet and a vertebrae was fractured below his waist. Because, he had two granmaul seizures while in x-ray, he was best helped by chemical paralysis. The nerve entering the brain which carries messages from the body to the brain had been injured and could not be operated on by the doctors. They told us forcing oxygen to the brain would cause the blood vessels to constrict and possibly allow Billy's brain to heal.

He had tubes in his nose, mouth, arms, bottom, and monitors across his chest. Four days of not knowing if he would really breathe when the machine was removed were unbearable for family and friends. When he did come out of it, he had amnesia for about 2 months.

He healed very rapidly and we are grateful to God and to our county medical teams, the helicopter staff, Hyattsville Volunteer fire department (which arrived on the scene almost immediately, because they were following two children on three wheeler who had come to our farm all the way from Germantown, without their parents knowledge), and the terrific medical staff at Children's Hospital.

February 5, 1985—Donnie's Suzuki LT250EF was purchased.
March 25, 1985—Billy's Suzuki LT23OGE was purchased.
May 16, 1985—Gary's Kawasaki 300 was purchased.

I feel helpless in my desire to warn other parents against the danger of this machine. While I know my children will not ride at this time, I remain afraid for their safety at some future time when their fear has subsided and friends are at play on their own ATV's.

Can our children and grandchildren afford the financial burden placed on their frail shoulders by injuries caused by their parents toys.

Mr. **Florio**. Let me, if that concludes your statement, let me ask what you suggest you think ought to be done?

Mrs. **Pleasants**. I really wish that we would have some laws to protect the parents. The false advertisement we had, making the machine look so simple, like it was the thing to do, take your children out. We did buy three.

Mr. **Florio**. Are you talking about advertisements on television?

Mrs. **Pleasants**. I think the television advertisements made us think that the machine was safe. And we bought three, and thought that they were safe and rode them a good while. And then the more we rode them, the more frightened we became. Unfortunately, for my son we waited too late.

Mr. **Florio**. How old was your son when the accident occurred?

Mrs. **Pleasants**. He was 12. A very good rider.

Mr. **Florio**. You heard the previous witness, the Congressman—you heard the previous Congressman read the label that apparently is affixed to most of these items that says, that they should not be for children of 14, 14 is an age or something; were you aware of that?

Mrs. **Pleasants**. No. I sure wasn't.

Mr. **Florio**. You didn't see the label? The label wasn't brought to your attention?

Mrs. **Pleasants**. There's not one on our machine.

Mr. **Florio**. All right.

Mrs. **Pleasants**. And the other thing is that I just feel like it's unfair that the burden is on the parent to protect the child from a machine that is as unstable and is dangerous.

Mr. **Florio**. The industries recommended practices will allow marketing of ATV's to children as young as 6 years. Have you got any thoughts as to whether a 6-year-old is capable of operating any of these types of machines that you're familiar with?

Mrs. **Pleasants**. I'm sure a 6-year-old can get on my Kawasaki Bayou and ride it, because you put it in gear and you allow the child to push the button and go.

Mr. **Florio**. So, physically he could operate it.

Mrs. **Pleasants**. He can.

Mr. **Florio**. What is your thought on the basis of your experience with regard to the desirability of a 6-year-old, and the safety of a 6-year-old operating any of these materials?

Mrs. **Pleasants**. My 6-year-old can't ride one. We bought—he was our 5-year-old that was on the back of the machine—really wanted one when he was 6. He put a lot of pressure on us to have one, and we just said, no, you are not ever going to ride one. And this was before Billy's accident.

But the problem with putting children on a small one, is it fair to introduce someone to something that they're going to use when they're 6 and tell them when their 8 that the next machine is too dangerous and he can't ride anymore.

I mean, what point—I don't think that it's fair to start them on a machine that shouldn't be ridden by most adults anyway. I mean, it's a piece of equipment; and I think it should be used as equipment and not as a toy.

Mr. **Florio**. You heard the previous witness in a sense say that the responsibility is largely the parents to oversee. Do you feel that these products are effectively almost practical nuisances that preclude the ability of a parent to monitor the activity of a child?

Mrs. **Pleasants**. That's right. I mean, they look so innocent most parents don't feel that they have to watch anyone. And that's the problem. I mean, I have talked to parents until I'm blue in the face and they still, you know, they agree; and then they let their children go home and ride them anyway.

Mr. **Florio**. The salesman where you purchased these, was there any effort to inform you about potential problems with regard to these machines for young people?

Mrs. **Pleasants**. No. He told us that sizing—I mean, we went to several stores and they seemed more concerned with the size of the machine and if it fit the child. And yet—I think Billy probably should have bought one that was smaller. They didn't give us any—there wasn't any training courses available.

I just don't feel like there was—maybe they didn't know.

Mr. **Florio**. If training was available at this point, would it be something that you feel that your children and you would take advantage of?

Mrs. **Pleasants**. I don't want any of my family on it.

Mr. **Florio**. Thank you very much.

The gentleman from California.

Mr. **Dannemeyer**. When was the 230 CC vehicle that your son was injured on purchased?

Mrs. **Pleasants**. The 230 was purchased March 25, 1985.

Mr. **Dannemeyer**. And how many children do you have in your home?

Mrs. **Pleasants**. Four.

Mr. **Dannemeyer**. This boy that's 12, where is he, the oldest, the youngest?

Mrs. **Pleasants**. He's my oldest son. I have a daughter 19, 17 year old, and then Billy is 13, and then the baby is 7.

Mr. **Dannemeyer**. How is your son getting along now; has he recovered at all?

Mrs. **Pleasants**. He has recovered real well. I think that we're lucky, if we had lived in some State other than Maryland and didn't have a helicopter, I wouldn't have my child now.

Mr. **Dannemeyer**. What time of the day or night did the accident happen with Billy, the 12-year-old?

Mrs. **Pleasants**. About 2:30.

Mr. **Dannemeyer**. Do I understand correctly that Billy was riding the 230 CC when the accident happened?

Mrs. **Pleasants**. Yes.

Mr. **Dannemeyer**. 2:30 in the afternoon; is that right?

Mrs. **Pleasants**. 2:30 in the afternoon.

Mr. **Dannemeyer**. And who all was at the home when the accident happened?

Mrs. **Pleasants**. No parents. He was not supposed to be on the machine, and he knew it. It was a rule. I mean, we have pulled him off the machine before. One time his tire went flat and we wouldn't allow him to put a new tire on for 3 months.

Mr. **Dannemeyer**. What day of the week was this?

Mrs. **Pleasants**. This was Sunday.

Mr. **Dannemeyer**. Sunday at 2:30 in the afternoon.

Mrs. **Pleasants**. The Dallas Cowboys, the Washington Redskins were playing, and there was a group of people there, and they were supposed to be in the house watching TV. And my husband had gone fishing and I was at a Royal Lipathon show that I offered to take the children with, too. Oh, no, they want to stay and watch the Dallas Cowboys and the Redskins play. And here they are out in the field getting killed.

Mr. **Dannemeyer**. Now, where Billy was, I take it, he wasn't watching the football game, obviously. Was anybody out there with him when he was on the bike?

Mrs. **Pleasants**. He had a boy that was about 19 on one of our dirt bikes. We have a dirt bike that is a 250 and a 175 we've had for about 10 years. And then there was another boy out that was a friend of his about 11 years of age.

Mr. **Dannemeyer**. Three boys?

Mrs. **Pleasants**. Three boys.

Mr. **Dannemeyer**. Each on their own machine?

Mrs. **Pleasants**. Yes. And when they know that they're not supposed to do it, this is three boys that still did it.

Mr. **Dannemeyer**. Well, now, the machine was purchased in 1985 in March, and the accident happened October 1986; that's about 1½ years. Were there instances where Billy had been caught riding this machine before the accident happened?

Mrs. **Pleasants**. That's how he had it taken away for 3 months at one time. And one time he didn't ride with his helmet. I mean, we were really stance on the helmet. I think wearing the helmet saved his life. It left marks, during this accident, because he went in a dip and it threw him, and he went about 50 feet, and then he touched over the handlebars. He broke his wrist, broke a place on his wrist and a place on his spine. And the helmet jammed down on his neck, and I guess it couldn't save that force on his neck, but it kept his skull from being fractured. I think it probably—it might have saved his life.

I mean, it might be that he had just been too far gone if he hadn't had the helmet on.

Mr. **Dannemeyer**. How many times had you disciplined Billy for riding that machine without permission before the accident happened?

Mrs. **Pleasants**. Many times. I mean, that was something that was, you know, you say, "You do not ride it. If you do, you don't ride for this week or a whole week." And for a child to be taken—I mean, this is something that they love. I mean, children want to get up and they want to get on it. No mother can watch that long.

Mr. **Dannemeyer**. Thank you, Mr. Chairman.

Mr. **Florio**. The gentleman from California, Mr. Bates.

Mr. **Bates**. Just one question. Knowing what you know now, would you still buy one of these machines?

Mrs. **Pleasants**. No.

Mr. **Bates**. You wouldn't. It seems to me like there are two parts to it. Part of it is the safety problems and the disclosures or notification and training and all that. Part of it seems that, whatever equipment is made there is going to be abuses or misuse of them. I'm trying to sort the two out.

Are you contending that the accident that occurred was a result of the equipment being designed in such a way to be too powerful or too dangerous?

Mrs. **Pleasants**. Yes.

Mr. **Bates**. You're saying that possibly with the tone down piece of equipment, less power or capability, that this accident would not have occurred or are you that familiar with what actually happened?

Mrs. **Pleasants**. This accident wouldn't have occurred. But some of the others still would have. The machine is just a wonderful looking little toy; and yet—and the speed is there. I mean, any little biddy child that can get on it, if you put it in fourth, they can wind it up and eventually get to any speed they want to go. If they can punch that little button, they can go.

Mr. Bates. What is the maximum speed?

Mrs. Pleasants. I don't know. But I know they go—I would think that probably go 45 or 50 miles an hour. I'm not brave enough to try it. I mean, people get on it and they say, why isn't there a speedometer. I say, because you can't ride it that fast, you'll be killed. I mean, everyone would say, well, where—how do I know when I'm going too fast? And I'd say, well, don't go that, you know, it really frightened me.

Mr. Bates. Do you know how fast Billy was going?

Mrs. Pleasants. No, I don't. But I know that Billy would ride too fast. He thought that he could—he thought he was immortal. We would go out at night to watch—look for deer on our farm, and all of a sudden Billy wouldn't be around.

Mr. Bates. Is there a maximum speed advertised?

Mrs. Pleasants. I don't know.

Mr. Bates. Thank you.

Mr. Florio. The gentleman from Utah.

Mr. Nielson. I'm curious about why you bought the Suzuki, the 230 CC, after you had the two accidents; you had an accident with a child injuring a foot, and one hurting their back. This had occurred on similar machines. I wonder why you let your son buy the machine in view of those two accidents?

Mrs. Pleasants. I don't believe that those two accidents had happened at that point.

Mr. Nielson. They followed the——

Mrs. Pleasants. I think so. Because I believe we had both of them at the time of that—yes, I'm sure we had both of them at that time.

Mr. Nielson. So, when did the two accidents, I missed that point, I guess. When did the two accidents occur, the one where the boy's foot was injured, and the one where—missed a week of school because of the back injury?

Mrs. Pleasants. Probably soon after Billy's was purchased. We did buy my husband's first, and then my son's smaller one. And he was out in the woods preparing a trail. So, I would say it was probably within the week-end.

Mr. Nielson. These occurred on the smaller machine, not this one? Where did the other two accidents occur; one on your husband's because he had a rider with him; is that true?

Mrs. Pleasants. I believe the one on—I'm trying to think if the rack was on the one that was my husband's. I don't think. I think my husband might have been on the smaller one, the 230, when it turned over, because if the rack had been on there, the 250 has a rack that you can carry—supposedly, you're suppose to be able to carry hay or something on it. And yet, if you do carry anything on it, it can go over backwards. The whole machine could flip over on top of you.

Mr. Nielson. Did the fact that this is the four-wheeler give you a little more sense of security as opposed to a three-wheeler?

Mrs. Pleasants. Yes.

Mr. Nielson. It seemed safer to you?

Mrs. **Pleasants**. We wanted for something safer than the three-wheeler to come out, because we wanted to use it on our farm. We thought it would be good for carrying, you know, we needed a piece of equipment that was tiny to carry hay to horses that wouldn't be real expensive to operate.

Mr. **Nielson**. At the time you purchased this equipment, did the salesman hint in any way, mention the fact that you ought to be 14 before he rode this one?

Mrs. **Pleasants**. No.

Mr. **Nielson**. Was your son—in the picture it looks like your son is rather large for his age; is that correct?

Mrs. **Pleasants**. I think the picture is kind of a little bit deceiving. But Billy has, he has grown a little bit, but he was much smaller at the time.

Mr. **Nielson**. Ten and a half when you bought these.

Mrs. **Pleasants**. He was probably 11, I think, at that time.

Mr. **Nielson**. You say you disciplined him a lot. Does this require a key to start?

Mrs. **Pleasants**. Yes, it does. And that's one of the things—I just feel like, you know, you get two sets of keys, all right. And we would put them away. And yet, how many parents are really going to grab the keys and hide them every time they leave their house. I mean, really—I mean, it's great—I mean, it's a good idea, everybody should keep a safe by their garage door and they should lock up all things that are dangerous before they leave the house. It really can't be done. I mean, it's not fair to the child to let them still—it's unfair. I mean, I just feel like if there were laws that said, you know, if a policeman catches a child on there and he says, "Son, I'd like to speak to your parents." And they go and they talk; and then the parents know. And if the parents still allow the child to ride—I wouldn't mind—I would rather have paid a $100 fine the first time a policeman came to my door, and $100 fine the second time and gone to jail for 1 week than to have gone through what my son has gone through.

Mr. **Nielson**. We certainly sympathize with you, and hope your son has a complete recovery. I thank the witness.

Mr. **Florio**. The gentleman from Ohio.

Mr. **Eckart**. Can you please tell me what the legitimate use of this would be around your farm, you mentioned carrying hay, but tell me why would you buy one?

Mrs. **Pleasants**. Well, I had 12 horses at the time, and our farm is—it's not a flat farm, and the horses tend to mess—the ground gets very soft around the barn area, and so that we would have to carry the hay up a hill to the horses, and we thought that when it was snowing or when it was really mushy, we could throw a bale or two of hay on and run up, you know, and it would save us a little bit of time. And yet, it wasn't the expense of a larger farm tractor or something that might be—I thought would be more dangerous.

I mean, I really thought this machine was safe. It looks so—it looks cute and cuddly. It's not.

Mr. **Eckart**. Have you not seen the TV advertisements for the vehicles, racing around and looking literally like it's as safe as walking?

Mrs. Pleasants. I can remember seeing magazine ads, families out there, and they're riding, and the people are riding up hills and jumping things. The sand dunes might be OK.

I really wouldn't want to have one land on top of me even in the sand, but, you know, but not—most hills, it's hard. I mean, at night when we would ride out, when I parked mine in the garage and stopped riding it, we had gone out at night, and I was riding on a side hill instead of up a hill, it's hard enough on our farm to hold your weight out over that machine and keep that thing from coming back with you.

But if you're riding on the side of a hill, the tires tend to bounce. All you have to do is hit any little bump, and the thing just—it loses control, and there's not—I mean, I'm pretty big. I have enough weight that I should be able to put my weight where I want to over that bike, and I said, "No, thank you. I'm not going to ride it."

Mr. Eckart. Did you view any manufacturer's tapes, any training tapes, review any manuals, any instructions? Were any offered by the dealer or the salesman?

Mr. Pleasants. We read the manual. There was a little green book that comes with the Suzuki and with my Kawasaki, and we read also a little leaflet that they gave us. But there were no training tapes available.

I think that a parent would have to really seek out those things to be able to—you'd have to locate them. No one's going to come up and say, you know, "Go to this on such-and-such day."

Mr. Eckart. Did the dealer in any way—did your children accompany you when you went to buy these?

Mrs. Pleasants. Yes.

Mr. Eckart. Did the dealer in any way ask, "Is this intended for your children to ride?"

Mrs. Pleasants. Yes. They knew that we were buying the one for Billy. It was very obvious. I mean, he was paying for it.

Mr. Eckart. And to follow my colleague's questions, they in no way advised you about children riding these vehicles?

Mrs. Pleasants. They told us that they should wear safety equipment. They told us that they might run up the back of their leg, because if you drop a foot down—and most people want to throw that foot down. It's real hard to keep on that machine. One reason for standing up is that it does keep you on the pedal, the little things there to stand on.

But if you're standing, you tend not to throw your foot down.

Mr. Eckart. I thank the chairman.

Mr. Florio. Thank you very much. We appreciate your testimony.

Mrs. Pleasants. Thank you.

Mr. Florio. We are now pleased to welcome the members of the Consumer Products Safety Commission, the Chairman, the Honorable Terrence Scanlon; Ms. Carol Dawson, Commissioner; and Ms. Anne Graham, Commissioner.

Mr. Chairman and members of the Commission, we are very pleased to have you in your first formal appearance before the subcommittee.

Any formal statements that you have will be put into the record. You may proceed as you see fit.

Mr. Chairman, we would like to hear from your first. Perhaps you could recognize the presence of the staff people that you have with you.

STATEMENTS OF HON. TERRENCE SCANLON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION; CAROL G. DAWSON, COMMISSIONER; AND ANNE GRAHAM, COMMISSIONER, ACCOMPANIED BY LEONARD DeFIORE, EXECUTIVE DIRECTOR; JAMES V. LACY, GENERAL COUNSEL; AND NICK MARCHICA, CHAIRMAN, ALL-TERRAIN VEHICLE TASK FORCE

Mr. Scanlon. Good morning, Mr. Chairman and members of the committee.

I would like to introduce on my far left the Vice Chairman of the Commission, Anne Graham; then Commissioner Carol Dawson; and then Nick Marchica, to my immediate left who is the Chairman of the Consumer Product Safety Commission's ATV Task Force; on my far right is Jim Lacy, the Commission's General Counsel, and on my immediate right is Len DeFiore, the Executive Director of the Commission.

Mr. Florio. We welcome you all to the committee.

Mr. Scanlon. Thank you.

We appreciate this opportunity to testify today on the Commission's actions to address the hazards posed by all-terrain vehicles. The Commission has previously provided detailed information on ATV's to the subcommittee.

Mr. Chairman, since 1982, there have been at least 696 deaths and an estimated 290,000 hospital emergency room treated injuries associated with the use of all-terrain vehicles. Injuries and deaths to children under 16 are of particular concern. Approximately 45 percent of the deaths and injuries were to children under 16 years of age.

In April 1985, the Commission directed its staff to undertake a 7-point action program, including commencing a rulemaking proceeding by issuing an Advance Notice of Proposed Rulemaking, an ANPR.

An ATV Task Force was established and directed: to (1) carry out technical analyses of ATV's, (2) monitor ATV activities to address potential hazards, (3) conduct public hearings on ATV's, and (4) report to the Commission by September 30, 1986. This comprehensive $2.2 million study led to the following major findings by the ATV Task Force:

One, typically children under 12 years of age are unable to operate any size ATV safely. This is because they lack adequate physical size and strength, cognitive abilities, motor skills and perception.

Two, children under 16 years of age are at a greater risk of injury and death than adults when operating adult-size ATV's. This is due to poor judgment by youngsters and failure to recognize risks and operate ATV's within their skill levels.

Three, the risk of injury declines significantly with ATV riding experience.

Four, 30 percent of all fatal ATV accidents were associated with alcohol use. Fourteen percent of all reported accidents with injuries referenced alcohol consumption by the operator.

Five, 31 percent of the ATV's involved in accidents were carrying passengers.

Six, well-constructed, well-fitted helmets could substantially reduce the number of fatal head injuries to ATV operators.

Seven, 74 percent of 3-wheeled ATV accidents involved tipping or overturning, compared to 59 percent for four-wheeled ATV accidents. The dynamic stability of four-wheeled ATV's is better than that of three-wheeled ATV's.

Eight, the handling performance of an ATV is strongly influenced by its suspension system. A properly tuned mechanical suspension for front and rear wheels is better than the front-only or tire-only suspended ATV's.

Nine, the majority of State governments have no laws regulating the use of ATV's. Where these laws do exist, they are not uniform from State to State.

Ten, the current draft industry voluntary standard—the so-called Phase I dealing with topics such as labeling and standardization of controls—is inadequate in addressing the risk of injuries related to ATV's.

The ATV task force briefed the Commission on regulatory and nonregulatory options for ATV's in November 1986 and, in December 1986, the Commission made decisions concerning ATV's. At that time, I made a 5-point motion that was adopted by the Commission by unanimous vote, 3-0. The motion adopted was:

One, the staff was directed to continue to participate in the second phase of the voluntary standard, which will address performance characteristics, and to keep the Commission advised of the standard's progress.

The staff was further directed to conduct the technical work necessary to support the issuance of one or more notices of proposed rulemaking to address the performance characteristics of three- and four-wheeled ATV's. This would include investigation of the role of tires in accident causation, specifically the effect of size, tread, and inflation.

Two, the staff was directed to prepare a letter on the Commission's behalf to be sent to all Governors, the Department of Interior, and other appropriate Federal Agencies stressing the importance of ATV safety. The staff was directed to make extensive use of the CPSC Regional Offices to actively inform consumers of ATV safety hazards. The staff was also directed to actively share all the Commission's information on ATV's with the States, including information such as the data on injuries and deaths, information concerning the unique handling characteristics of ATV's, minimum age recommendations, the importance of wearing helmets and protective clothing, and the importance of not consuming alcohol, riding with a passenger or riding on paved roads.

Three, the staff was directed to update the ATV consumer safety alert to include information developed by the ATV Task Force, strongly encouraging the use of helmets and other protective gear, emphasizing the need for training, and cautioning against improper or inappropriate ATV riding practices such as the carrying of passengers, the use of alcohol or drugs, and the use of ATV's by children under 12.

The staff was further directed to continue actively conducting clearinghouse activities relating to ATV safety.

Four, the staff was directed to develop an extensive notice program that expands upon the ATV Task Force labeling recommendations. This program should be developed expeditiously and should provide all the types of notice and warning necessary to fully advise all consumers of the risks associated with ATV's and how to minimize those risks. The staff should report back to the Commission with an expanded plan as soon as possible.

Five, the staff was directed to prepare a detailed letter for Commission approval, formally advising the SVIA Voluntary Standards Committee of the Commission's displeasure at the rate of progress to date. Phase I of the voluntary standard, particularly the provisions on labeling, training, and minimum age recommendations, has not adequately addressed the risk of injury associated with ATV's. The letter also incorporated the staff's comments identifying other problem areas.

The Commission then voted 2 to 1, with Commissioner Dawson dissenting, to direct the staff to prepare a letter for Commission approval requesting that the ATV manufacturers voluntarily cease marketing ATV's intended for use by children under 12 years of age. The staff is to report back to the Commission on the industry's response. At that time, the Commission will decide what action, if any, it should take to address this issue.

In addition, the Commission voted 2 to 1—mine was the negative vote—to seek an enforcement action under section 12 of the Consumer Product Safety Act in a U.S. District Court for appropriate relief necessary to protect the public. The Commission is seeking the assistance of the Department of Justice in order to protect the public in an efficient and expeditious manner.

Mr. Chairman, we are pleased to report the following concerning the implementation of these decisions:

One, letters were sent to the Nation's governors on January 28, 1987, and to Federal Agencies on February 26, 1987. Several requests for additional information have been made, and we have provided the data.

Two, on February 2, 1987, the Commission requested the assistance of the Department of Justice on the enforcement matter. We anticipate a decision to be made soon.

Three, a detailed letter was sent to the SVIA on March 30, 1987, concerning the Commission's displeasure with the rate of progress to date of Phase I of the voluntary standard. This matter was also discussed at the April 21, 1987, voluntary standards meeting. We are awaiting a response by the industry.

Four, on April 21, 1987, the CPSC staff met with the Specialty Vehicle Institute of America Voluntary Standards Committee to continue discussions on a voluntary standard to address the performance characteristics of ATV's. A technical working group will be established to expedite the development of the voluntary standard.

CPSC staff engineers have prepared contractual requests totaling over $200,000 of fiscal year 1987 funds to address the performance characteristics of ATV's.

Five, the ATV Consumer Alert was updated and made available to the public on May 7, 1987.

In closing, Mr. Chairman, the Commission believes that considerable progress has been made to date to address the hazards posed by ATV's quickly and effectively. Again, we thank you for giving us the opportunity to provide this statement. My colleagues, the staff, and I will be happy to respond to yours and the other subcommittee members' questions, any that you may have.

Mr. Chairman, I also have a personal statement, as do Commissioner Dawson and Commissioner Graham, and we would like them placed in the record, if we may.

Mr. Florio. Without objection, they will be put into the record.

[The prepared statement of the Mr. Scanlon follows:]

STATEMENT OF TERRENCE SCANLON

Mr. Chairman and Members of the Subcommittee: I have a few comments I would like to add to those made on behalf of the full Commission a few moments ago. Just for the record, these comments reflect my personal views and not necessarily those of the full Commission.

Since 1982, almost 700 people have died and over 290,000 are estimated to have been injured in accidents associated with all-terrain-vehicles (ATV's). From the time this growing toll of tragedy became apparent to the Commission, it has taken the challenge of developing countermeasures very seriously. First, the industry was called in for an explanation, then a special ATV Task Force was created, followed shortly thereafter by the publication of the first Advanced Notice of Proposed Rulemaking (ANPR) in several years. Under the aegis of the of the ATV Task Force, an extensive study of ATV's and the risks associated with them was subsequently conducted, which included engineering, medical, human factors and hazard analyses. Not only was this detailed study completed on time, but it formed the basis for many of the decisions that the Commission ultimately reached on ATV's. In all, over $2 million has been spent on this effort to date and more will be spent in the future. All-terrain vehicles will remain a Commission priority in fiscal year 1988, just as they were in fiscal years 1986 and 1987.

So that the subcommittee may have a fuller picture of what the Commission has done with regard to ATV's, I would like to provide the subcommittee with a detailed chronology and ask that it be included in the record.

As far as the decisions reached by the Commission on ATV's are concerned, just let me say this. In April, 1985, I strongly supported issuance of the ANPR on ATV's and the creation of the ATV Task Force so that we would not foreclose any options that might reduce the death and injury toll. I also supported the six options the Commission adopted on December 18, 1986. In fact, I sponsored five of them and voted for all six. In addition, I support the filing of a complaint under Section 12 of the Consumer Product Safety Act, my only reservation being that I do not favor pursuing two of the five remedies that my colleagues approved last December 12. However, as Chief Administrative Officer of the Commission, I have a responsibility for implementing those decisions the Commission has taken. Also, the Department of Justice has not yet decided whether to handle the case. So, I would rather not elaborate on the remedies in the event the Department of Justice decides to represent us. But, I am confident the Department of Justice decides to represent us. But, I am confident the Department will consider all aspects of the case in reaching its decision.

Mr. Chairman, I am glad to have had this opportunity to present my views and would be pleased to answer any questions that you, or other members of the subcommittee, might have.

CHRONOLOGY OF EVENTS

The Commission has approved the All-Terrain Vehicle (ATV) project as a priority project for FY 1985, FY 1986, FY 1987, and FY 1988.

Significant Actions: FY 1985

April 3, 1985 -- The Commission voted to establish a priority project on ATV's by approving a seven-point action plan including commencing a rulemaking proceeeding by issuing an Advance Notice of Proposed Rulemaking (ANPR).

April 26, 1985 -- Commission staff and Specialty Vehicle Institute of America (SVIA) initiate voluntary standards development.

May 2, 1985 -- Updated ATV death information forwarded to the Commission.

May 10, 1985
May 13, 1985
May 17, 1985 -- Informational packages forwarded to the Commission for use at the May 21, 1985, Hearing of the Commerce, Consumer and Monetary Affairs Subcommittee of the Committee on Government Operations.

May 30, 1985 -- Public Hearing: Jackson, Mississippi

May 31, 1985 -- Advance Notice of Proposed Rulemaking published in THE Federal Register.

June 17, 1985 -- Public Hearing: Dallas, Texas

July 25, 1985 -- ATV Task Force status report for the period from May 15, 1985, to June 30, 1985, forwarded to the Commission.

July 25, 1985 -- Public Hearing: Concord, New Hampshire

Aug. 8, 1985 -- ATV Clearinghouse sends out first mailing to 219 interested parties.

Aug. 16, 1985 -- SVIA draft voluntary standard for ATV's sent to the canvass list for comment.

Aug. 22, 1985 -- ATV Task Force status report for the period from July 1, 1985, to August 16, 1985, forwarded to the Commission.

Sept. 3, 1985 -- Public Hearing: Milwaukee, Wisconsin

Sept. 13, 1985 -- ATV Clearinghouse sends out second mailing to 322 interested parties.

Sept. 18, 1985 -- ATV Task Force comments on the voluntary standard for ATV's sent to the SVIA.

Sept. 26, 1985 -- ATV Task Force status report for the period August 19, 1985, to September 20, 1985, forwarded to the Commission.

Significant Actions: FY 1986

Oct. 10, 1985 -- Update of ATV deaths and injuries forwarded to Commission.

Oct. 15, 1985 -- Voluntary Standards Meeting to discuss performance characteristics requirements.

Oct. 17, 1985 -- Public Hearing: Los Angeles, California

Nov. 4, 1985 -- ATV Task Force status report for the period from September 23, 1985, to October 31, 1985, forwarded to the Commission.

Nov. 20, 1985 -- ATV Task Force status briefing to the Commission.

Dec. 4, 1985 -- Voluntary Standards Meeting to discuss performance characteristics requirements and comments on draft voluntary standard.

Dec. 11, 1985 -- ATV Task Force status report for the period from November 1, 1985, to December 6, 1985, forwarded to the Commission.

Dec. 19, 1985 -- Market sketch for ATV's forwarded to the Commission.

Dec. 31, 1985 -- Preliminary Report of ATV Injury Survey forwarded to the Task Force Chairman.

Jan. 16, 1986 -- Preliminary Report on the Survey of All-Terrain Vehicle (ATV) Related Injuries forwarded to the Commission.

Jan. 20, 1986 -- ATV Task Force members attend an ATV trade show in Long Beach, California.

Jan. 21, 1986 -- Voluntary Standards Meeting to discuss performance characteristics and the draft voluntary standard.

Jan. 22, 1986 -- ATV Task Force status report for the period from December 9, 1985, to January 10, 1986, forwarded to the Commission.

Feb. 10, 1986 -- ATV Task Force Chairman informs Commission that the voluntary standard will be reballoted.

Feb. 24, 1986 -- ATV Task Force status report for the period from January 13, 1986, to February 14, 1986, forwarded to the Commission.

March 4, 1986 -- Update of ATV deaths and injuries forwarded to the Commission.

March 5, 1986 -- ATV Task Force status briefing to the Commission.

March 11, 1986 -- Voluntary Standards Meeting to discuss performance characteristics and the draft voluntary standard.

March 25, 1986 -- Public Hearing: Anchorage, Alaska

April 10, 1986 -- ATV Task Force status report for the period from February 17, 1986, to March 31, 1986, forwarded to the Commission.

April 29, 1986 to May 1, 1986 -- Voluntary Standards Meeting to discuss the draft voluntary standard and observe performance test procedures.

May 2, 1986 -- ATV medical analysis contract awarded.

May 12, 1986 -- ATV human factors analysis contract awarded.

May 13, 1986 -- ATV Task Force status report for the period April 1, 1986, to May 9, 1986, forwarded to the Commission.

June 3, 1986 -- ATV Clearinghouse mailing to more than 320 interested parties.

June 4, 1986 and June 5, 1986 -- Voluntary Standards Meeting to discuss the draft voluntary standard and performance test procedures.

June 23, 1986 -- SVIA reballot of draft voluntary standard sent to the canvass list for comment.

June 27, 1986 -- Update of ATV deaths and injuries forwarded to the Commission.

June 30, 1986 -- ATV Task Force status report for the period May 9, 1986, to June 6, 1986, forwarded to the Commission.

July 8, 1986 and July 9, 1986 -- Voluntary Standards Meeting to discuss the draft voluntary standard and performance test procedures.

July 23, 1986 -- ATV Task Force status report for the period June 9, 1986, to July 11, 1986, forwarded to the Commission.

Aug. 7, 1986 -- Voluntary Standards Meeting to discuss the draft voluntary standard and performance test procedures.

Sept. 3, 1986 -- ATV Task Force comments on the reballoted voluntary standard for ATV's sent to the SVIA.

Sept. 22, 1986 -- Voluntary Standard Meeting to discuss the draft voluntary standard and performance test procedures.

Sept. 29, 1986 -- ATV Task Force Technical Package forwarded to the Office of the Secretary.

Sept. 30, 1986 -- ATV Task Force Report on Regulatory Options for ATV's forwarded to the Commission.

First Quarter -- FY 1987 Significant Actions

Nov. 14, 1986 -- SVIA call for comments to draft ATV dynamic stability and performance voluntary standard.

Nov. 17, 1986 -- Voluntary Standards Meeting to discuss the draft voluntary standards.

Nov. 19, 1986 and Nov. 20, 1986 -- ATV Task Force Briefing to the Commission on regulatory and non-regulatory options for ATV's.

Dec. 12, 1986 -- Commission enforcement decision on ATV's.

Dec. 18, 1986 -- Commission decision on ATV's.

Dec. 29, 1986 -- Update of ATV deaths and injuries forwarded to the Commission.

Second Quarter -- FY 1987 Significant Actions

Jan. 28, 1987 -- Commission letter to the Governors concerning ATV safety.

Feb. 2, 1987 -- Commission requests assistance of the Department of Justice.

Feb. 9, 1987 -- ATV Task Force comments on the draft ATV dynamic stability and performance voluntary standard.

Feb. 18, 1987 -- Commission letter to ATV manufacturers requesting voluntary cessation of marketing ATV's intended for children under 12.

Feb. 26, 1987 -- Commission letter to Federal Agencies concerning ATV safety.

March 11, 1987 and March 12, 1987 -- Meeting with State officials in Louisville, Kentucky, to discuss model ATV legislation.

March 30, 1987 -- Commission letter to the SVIA expressing displeasure with lack of progress on Phase I of the voluntary standard.

Third Quarter -- FY 1987 Significant Actions

April 21, 1987 -- Voluntary Standards Meeting to discuss the two draft voluntary standards.

Mr. **Florio**. May I ask if any of the other Commissioners care to make any oral presentation?

Ms. **Dawson**. Yes, I do.

Mr. **Florio**. Commissioner Dawson.

STATEMENT OF CAROL DAWSON

Ms. **Dawson**. Thank you very much.

As the Chairman has indicated, I do have a statement for the record. In the interest of time, I won't read it. But I did want to make a few additional comments.

As you know, the activities of the Commission with regard to this issue have received a lot of publicity. As a person who has personal conservative instincts, when I approached this issue 2 years ago, I was rather skeptical as to whether the Commission could really do anything. In fact, I was the only Commissioner who cast a dissenting vote against issuing an ANPR at that time.

Subsequently, I supported the efforts of our ATV task force and the work of the staff. I also supported efforts to work with industry to develop standards that would address the safety issues that we're talking about today.

I attended five out of the six public hearings that were conducted throughout the country, listening to people on both sides of this issue, industry, users, doctors, and parents who had injured children.

I have also taken the ATV training course. I have ridden the vehicles, various makes and models, both three-wheelers and four-wheelers. I have even ridden on the dunes at Pismo Beach. And I have to say that they are fun. They're good, fun vehicles, and I understand why those that own them enjoy them and support them. I don't wish to deprive them of that entertainment and that recreation.

At the same time, given the mandate that this agency has from Congress to protect the public from unreasonable risks of injury and given the facts that were collected by our ATV task force, efforts which cost us over $2 million and took over 18 months to complete, I was led to make the decisions on this issue which you've already mentioned. They were difficult decisions to make; they weren't made lightly. I suppose that one could second-guess them or criticize them on either side of the issue.

I just want to say that they were decisions that were made after careful study and thorough analysis, and I support our continued efforts to deal with this issue with all the various tools available to the agency right now.

Thank you very much.

[The opening statement of Ms. Dawson follows:]

Opening Statement of Commissioner Carol G. Dawson

Mr. Chairman, thank you for giving us the opportunity to appear before your subcommittee today to discuss the CPSC's progress on the all-terrain vehicle issue.

As our joint statement explains, the Commission has taken several actions based on the 18-month, $2 million study done by the staff. This study helped us determine that the ATV issue is perhaps one of the most complex and important in the agency's history, and also one of the least susceptible to easy solutions.

The ATV work done by the agency's staff is remarkable for its speed and professionalism, especially when one considers that the engineering analysis of the vehicle pushed the staff into uncharted territory. I think it is safe to say that the CPSC staff knows more about how and why ATV's perform as they do than even their manufacturers, if the information industry has given us to date is any indication.

Armed with that data, the Commission made a series of decisions that represent a balanced yet effective approach to the ATV safety problem. We had to weigh not only the desires of a staunchly loyal riding public, but also our obligation to an innocent riding populace that unknowingly assumed risks when they climbed aboard ATV's. We balanced the need for fast action with the requirement that whatever action we took be supported by sufficient facts.

There is no denying that ATV's, with the death and injury toll associated with their use, present a problem that the Consumer Product Safety Commission had an obligation to address. There is also no denying that these vehicles, with their capacity to go over a variety of terrain and their ability to provide great freedom of movement, are staunchly defended by their own owners and riders. Those who want these vehicles banned will not be pleased with the Commission's decision. Neither will those who want ATV's left untouched. But the Commission's mandate is to protect the public against unreasonable risks of injury. Our decision in the case of ATV's meets our obligations to the American people and will, I feel, produce the best possible result for all concerned.

Mr. **Florio**. Thank you very much.

Commissioner Graham.

STATEMENT OF ANNE GRAHAM

Ms. **Graham**. Thank you, Mr. Chairman. I will be brief.

I believe the ATV issue is the most important issue facing the Commission. The average risk of injury from ATV riding is too high. Over the last 2 years, there have been approximately 20 ATV-related deaths per month, as well as 7,000 ATV-related injuries treated in hospital emergency rooms.

I am concerned by the industry's unwillingness to recognize this hazard. I am disappointed in the lack of progress on the voluntary standard, as well as the almost total lack of training.

This is particularly disappointing, given the fact that other industries have worked cooperatively with the Commission to protect the consumer. We in Government have a responsibility and an obligation to make every effort to find reasonable solutions to protect those consumers who choose to ride these ATV's.

I would be pleased to try to answer any questions you have.

[The prepared statement of Ms. Graham follows:]

Statement of Anne Graham

I concur with the Chairman's statement regarding the seriousness of the ATV safety issue. I am extremely concerned with the hazards associated with ATV's, especially the hazards with children who operate adult-sized ATV's.

This is the most serious public safety issue facing the Commission. For the last 2 years the Commission has targeted ATV's as a priority project and has spent a considerable amount of money and effort, which is certainly justified by the seriousness of this issue.

The average risk of injury from ATV riding is high. Over its estimated seven year life, the average ATV has a one-in-three chance of being involved in an accident resulting in death or injury. Over the last 2 years there have been approximately 20 ATV-related deaths per month as well as 7,000 estimated ATV-related injuries treated in hospital emergency rooms. These numbers are unacceptably high.

I am concerned by the industry's unwillingness to recognize this hazard. Industry is not being honest with the American public about the inherent risks with these machines. I am especially disappointed in the lack of progress on the voluntary standard as well as the almost total lack of training. This is particularly disconcerting given the fact that other industries have worked cooperatively and forthrightly with the Commission to protect the consumer.

We in the Government have a responsibility and an obligation to make every effort to find reasonable solutions to protect those consumers who choose to ride these vehicles.

Mr. **Florio**. Thank you very much to all three of the Commissioners.

Mr. Chairman, do you regard yourself as having the authority to impose a ban on the sale of these machines for use by children, whatever the age—let's say 14 years old—do you regard yourself as having that authority, should the Commission see fit to do so?

Mr. **Scanlon**. I believe we have the authority. I think we would have to prove the case.

What we have done to date by a 2 to 1 vote—I mentioned this in my prepared statement on behalf of the Commission—is ask the industry to cease marketing the kiddie-size, child-size ATV's.

The industry responded to us approximately 2 weeks ago, saying that they would not do this. Our staff, under the direction of Mr. Marchica, is developing options that will be presented to us within 5 weeks on what means are available to the Commission to address this issue.

Mr. **Florio**. Well, let me tell you what my perception of the basic dilemma is, is that—and we heard a little bit from the previous witness—you can have all of the warnings, take all of the actions that you've suggested be taken, and that it may very well be that the inherent instability of these machines make them inappropriate for use by certain classifications of people, and let's talk about young people, and that going forward even with the suggestions you've made is not going to substantially reduce the number of injuries and reduce the number of deaths for young children.

Do you regard it as within the scope of your authority to, in a sense, regard a product as sufficiently hazardous—and you've obviously seen fit to suggest that this is an imminent hazard case—so as to be able to talk about banning, rather than warning, just assuming in the instance of children, that these may very well be something that approaches an "attractive nuisance," that nothing you will ever deal with in terms of information out there is going to reduce the actual hands-on injury capability of these types of vehicles?

Mr. **Scanlon**. We are aware of the numbers of injuries and deaths, both on the child-sized and on the adult-sized, and that is why we have asked industry to cease marketing. I think this was the best way to go, so that we would not immediately be in a litigious mode.

Mr. **Florio**. But you have testified that the industry has not seen fit to accept the recommendations. Likewise, the standards that the industry has come forward with, you have described as wholly inadequate. Now you have taken the next step, which is to move—not for you to take enforcement action, but to suggest that the Justice Department consider taking enforcement action, which I regard—and I would like some clarification on that—I regard that as very difficult to understand how you maintain your independence when your enforcement capability has been shifted to another agency.

We have the directive, as I understand it, that the Agency is supposed, in this case the Justice Department, is supposed to respond to you within 45 days, which have already lapsed. You have the ability then to initiate actions on your own. The 45 days have lapsed. I assume you are still waiting. Is it conceivable that you have imposed any deadline—have you imposed any deadlines on the Justice Department on this response?

Mr. **Lacy**. Mr. Chairman, could I jump in for a second?

Mr. **Scanlon**. You have raised a number of issues. I will try to respond to each one.

Mr. **Florio**. I guess my bottom line question is at what point do we get some action of the nature that you have even suggested? I am a little concerned about just going forward and frankly nothing happening.

Mr. Lacy, do you want to respond?

Mr. **Lacy**. Just some technical points, Mr. Chairman. There is no requirement that the Justice Department act in 45 days. In fact, under section 27(b)(7) the CPSC has the optional power to take its own steps after 45 days have elapsed.

Mr. **Florio**. Well, I presume that optional power means that at that point, the Commission makes a determination as to whether it wants to follow its own advice whether to bring the action. Now 45 days have gone. Perhaps I'd ask you or the commissioners, what is your decision with regard to the 45 days having gone by, your recommendation to the Justice Department not having been acted upon, and your intention to act upon your own recommendation?

Mr. **Lacy**. To complete my comment, Mr. Chairman, the fact of the matter is that we have an extensive record that the Justice Department is considering right now. The Commission has had this file for quite some time and has developed quite some record——

Mr. **Florio**. What is your view about the Justice Department scope? Is it making the ministerial decision as to whether it has the resources? Or is it starting to review the record to find out if your recommendation has merit?

Mr. **Lacy**. The decision has been made by the Commission to move forward. Now the question is as to representation. I think that since Justice has only had this case for 3 months and, in fact, the case represents a fairly significant endeavor, that the Justice Department is fully within their right to consider all aspects of the case so that the taxpayers' dollars are not wasted in us moving forward with an ill-prepared case.

Mr. **Florio**. So then you regard the Justice Department authority at this point to review the merits of your recommendation, as opposed to merely making a determination as to whether they have resources?

Mr. **Lacy**. The Justice Department right now is considering whether it will represent us in the case, and this does not go to review of the Commission's decision. The Commission's decision is made. What we are interested in is developing the best and most effective representation that we can have in a court of law to pursue the action.

Mr. **Florio**. Let me just ask the last question in my time as the Chairman as to what is your own time deadline that you have imposed upon yourself, if any, as to how much longer you are going to wait for the Justice Department to make this determination before you make the decision to go forward?

Mr. Scanlon. I have had three conversations with the Assistant Attorney General from the Civil Division since this matter was referred to Justice in early February. Our staff, including our legal staff, has had a number of meetings with their counterparts at the Department of Justice. I am advised that Justice will be making a determination in the next few weeks.

What I must say, Mr. Chairman, is this: This is a very complex issue. The Commission spent 18 months at a cost of about $2.2 million. To us, a small Agency, that is a big dollar amount for probably the most extensive study or review ever conducted on any consumer product by the Consumer Product Safety Commission. So I think it is better that Justice take the 3 to 4 months that is necessary to fully understand this case before they embark.

Mr. Florio. Mr. Chairman, that is not responsive to my question. My question is how long is it going to be that you will wait before the Commission makes a determination to bring the action if the Justice Department either makes the decision not to, or just doesn't make a decision? You clearly have the authority to bring this action yourself, do you not?

Mr. Scanlon. That's correct.

Mr. Florio. Has there been discussion among the commissioners as to what the outside—if we are sitting here a year from now and there's nothing that's been done by way of the Justice Department's action—obviously that's not going to be something that I suspect we will be comfortable with——

Mr. Lacy. Mr. Chairman——

Mr. Scanlon. I have been advised that we will have a decision by Justice within a few weeks. I am willing to wait those few weeks. You may want to ask my colleagues what their assessment of the situation is.

Ms. Graham. I think that we can wait 2 weeks. I am most anxious to get a decision.

Mr. Florio. A couple of weeks—I assume a couple of weeks means 2, 3 weeks, so that we can anticipate action by the Justice Department at that point. At the end of that point if nothing has been done, if we are in the same situation, can someone make a suggestion to us as to what we can expect from the Commission in the absence of a decision to go forward, or a decision not to go forward?

Mr. Scanlon. Well, if Justice does not accept the case, then the Commission will reconvene, review the options available to us, and then make a decision. And that will be done quickly, once the decision is received from the department.

Mr. Florio. Why did the Commission not take this action itself if it has the authority?

Mr. Scanlon. The Commission also has limited resources.

Mr. Florio. Is this the major motivation?

Mr. Scanlon. In my estimation it is.

Mr. Florio. Is anyone offended by the idea that an independent Commission is dependent upon the administration for enforcement action?

Mr. Scanlon. I don't view it as being dependent upon the administration for an enforcement action.

Mr. **Florio**. Well, you're telling us you have insufficient resources. It's a decision you made to make a recommendation. If the resources of the Justice Department are not available to you, your recommendation is not going to be enforced?

Mr. **Scanlon**. What I am saying, Mr. Chairman, is that we are a small Agency with a small legal counsel staff. The resources necessary to undertake this case against one, two, three or four manufacturers will be extensive. And while in this litigious mode, other issues could be neglected by the Commission.

Mr. **Lacy**. To be frank with you, Mr. Chairman, the Civil Litigation Division at the Justice Department has extensive background in litigating very complex cases. This is a very complex case. Now I think it is our view that we are taking the most effective step—it's certainly my view that the Commission was taking the most effective steps it could to protect the public from unreasonable——

Mr. **Florio**. And I appreciate that, and I appreciate the limitation of resources, although, frankly, I would have thought that dealing with all the options and all the alternative scenarios, accepting the fact that the Justice Department may not accept it, I would have thought you would have had contingency plans for recommendations for additional resources.

Mr. **Lacy**. I would make two points. First of all, we have no indication from the Justice Department that they are not going to take the case at this time.

Mr. **Florio**. Do you have any indication that they are going to take the case?

Mr. **Lacy**. We have every reason to believe that we are moving forward and——

Mr. **Florio**. What does that mean, moving forward?

Mr. **Lacy**. Well, we have no clear indication that they are going to take the case, but I have to say——

Mr. **Florio**. Do you have an unclear indication?

Mr. **Lacy**. But we have no clear indication or even unclear indication that they are not going to take the case.

Mr. **Florio**. I will address my last point to the chairman. I am apprehensive. I am apprehensive. I know that there are lots of things on everyone's agenda, and I think that if you have gone so far as to say that this is conceivably an imminent hazard—and, frankly, I was very troubled by the previous witness' testimony. In some respects I am troubled by it because it seems to me that we are going to have to take some action in this action because we can't be relying upon people to do the right thing in some instances in an issue—when there is an issue here of maybe inherent safety considerations. There is a need for some action. And I am troubled by the recommendation going forward and then the potential for the recommendation not being followed through upon, and then being a gridlock; that if you truly don't have the resources, and I suspect you are probably correct, there are a certain amount of self-imposed problems here over the last number of years, when people don't ask for resources and the resources are not there and you can't take action. But I am hopeful that someone is thinking through what happens if the Justice Department doesn't take this action.

Mr. **DeFiore.** Mr. Chairman, I would say that we have developed contingency plans in terms of shifting resources, so that if, in fact, Justice did not take the case and the Commission wanted to, we would be in a very good position to at least demonstrate to the Commissioners——

Mr. **Florio.** That's very helpful.

Mr. **DeFiore** [continuing]. What would have to be foregone in terms of other activities in order to pursue this. So the financial and resource analysis has been done, at least preliminarily.

Mr. **Florio.** Well, that's helpful. And I look forward to information coming in the next 2 or 3 weeks from you and/or Justice.

I yield to the gentleman from California.

Mr. **Dannemeyer.** Thank you, Mr. Chairman.

These questions relate to the Commissioners, and feel free to respond.

What is the relative risk of injury and death per house of use for ATV's as compared to other activities, such as the use of snowmobiles or trail bikes?

Mr. **DeFiore.** Mr. Dannemeyer, I can make an attempt——

Mr. **Dannemeyer.** Well, wait a minute, Mr. DeFiore. Your sign says you are an executive director. I'd like to have a response from the Commissioners. They are here; they can speak for themselves.

Mr. **Scanlon.** I'll start. I don't think we have good data on that, Mr. Dannemeyer, regrettably. Over 1 year ago there was a comparative use survey done with snowmobiles and mini-bikes. That was done by Dr. Verhalen of our staff. That study essentially said that ATV's were no more dangerous than snowmobiles and mini-bikes.

There is one other study that has been submitted to us by the industry, done by a Dr. Edward Heiden, a former Commission staffer. That study essentially says the same thing.

Mr. **Dannemeyer.** The staff recommended undertaking a study to find this out in the summer of 1985. Why didn't you do a study?

Mr. **Scanlon.** I voted for that study. I lost the vote.

Mr. **Dannemeyer.** How about Commissioners Dawson and Graham?

Ms. **Dawson.** Yes, sir. To put that issue in context, at the time we considered it, the staff members assigned to this issue advised that such a comparative study was not necessary; that we could continue with our work without doing it.

The other factor which, of course, meant a great deal to me, was that those studies were estimated to cost upward of $50,000. I did not feel that, given the resources of the Commission, it was an expenditure that was necessary.

The other point I would like to make is that to compare these three types of vehicles is a little difficult, in my view. I think everyone agrees that the ATV is unique. It's not like a snowmobile, and it's not like a trail bike. So that even if a study is done, I'm not sure that it has a great deal of meaning. Since there has been a lot of discussion about this issue, I would like to point out, too, that the memorandum that the chairman referred to as a study, we felt, lacked the credibility it needed since it really wasn't based on any survey. It was simply based on some speculation by public witnesses at some hearings.

The Commission took a stand on that, and if you would like, I would be happy to submit for the record the statement the Commission made at the time.

[The following information was submitted for the record:]

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting by Ballot

In the Matter of: Freedom of Information Act Request for ATV Memorandum (Restricted OS #4803)

Commissioners Voting:
Chairman Terrence Scanlon (9-26-86)
Commissioner Carol G. Dawson (10-14-86)
Commissioner Anne Graham (10-14-86)

Decision: By vote of 2-1, the Commission decided to release under the Freedom of Information Act (FOIA) a June 13, 1986 memorandum from the Directorate for Epidemiology concerning the relative rate of injury of all-terrain vehicles (ATVs) and other off-road vehicles, so long as the memorandum is accompanied by copies of an October 14, 1986 statement submitted by Commissioners Dawson and Graham (copy attached), and other related documents as specified in the Commissioners' statement; and further decided that FOIA requests for any of the specified documents must receive the entire package of documents so specified. Additionally, the Commission majority determined that the June 13, 1986 Epidemiology memorandum and a June 13, 1986 Economics memorandum concerning the cost of ATV-related injuries should not be affirmatively disseminated pursuant to requirements of section 6(b)(6) of the Consumer Product Safety Act for the reasons outlined in the attached statement. Commissioners Dawson and Graham voted to approve the decisions as set forth above. Chairman Scanlon voted to release the memorandum without condition, noting his support for full affirmative disclosure of the memorandum so that the public could be fully apprised of the complete record of the CPSC's ATV proceedings.

For the Commission:

Sadye E. Dunn
Sadye E. Dunn, Secretary

Attachment

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

COMMISSION DECISION ON ATV FOIA REQUEST
OCTOBER 14, 1986

On June 13, 1986, the Associate Executive Director for Epidemiology prepared a memorandum comparing the frequency of use of ATVs with that of trailbikes and snowmobiles. The memorandum contains several charts purporting to show comparisons for such use. On that same date, the Directorate for Economics prepared another memorandum that estimated the costs of ATV-related injuries. This second memorandum relies on and incorporates the charts and conclusions of the first document.

The Office of General Counsel then raised a number of questions about the accuracy of both memoranda by way of a June 23, 1986 memorandum. The AED for Economics and the AED for Epidemiology responded to the OGC inquiry in memoranda dated June 30 and July 15 respectively.

Despite these replies by the two directorates to the OGC inquiries, questions remain about whether the memoranda in question are inaccurate and/or misleading. Section 6(b)(6) of the Consumer Product Safety Act requires the Commission to ensure that publicly-disclosed information reflecting on the safety of a consumer product or a class of products be accurate and not misleading.

In September of 1985, the Commission specifically voted against conducting a survey, proposed by the AED for Epidemiology, to compare the use of ATVs with that of other recreational vehicles. The Commission was advised that such a comparison is not legally required to support a rulemaking proceeding under the CPSA. Furthermore, the Commission felt that studies of other vehicles were irrelevant to an inquiry about ATVs, might mislead the public, and would needlessly divert scarce agency resources.

Nonetheless, in a June 13, 1986 memorandum, the AED for Epidemiology compared the frequency of ATV use with that of trailbikes and snowmobiles. The memorandum bases its conclusions on the testimony of four ATV dealers and three ATV users who testified at the Commission's nationwide ATV hearings. A review of that testimony shows that six of the witnesses provided off-the-cuff guesses in response to questions about how often ATVs were used in comparison to other off-road vehicles. In virtually every case, the witnesses made clear that their answers were rough guesses, and in every case but one the witnesses provided no data to substantiate their opinions. Despite this lack of data, however, the June 13 memorandum from Epidemiology includes charts and graphs developed from that testimony, which may give the appearance that the information provided by the witnesses is factually accurate.

In view of the lack of factual support for its charts and data, the Commission believes that the Epidemiology memorandum of June 13 may be misleading. It could lead a reasonable reader to conclude that the information is credible when, in fact, it may not be. This conclusion is enhanced, in part, by the June 13 memorandum from the Directorate for Economics, since that document uses and relies on the Epidemiology information to assign cost figures to injuries associated with ATVs, trail bikes and snowmobiles. Regrettably, the Economics memorandum also fails to indicate the tenuous nature of the data on which its conclusions are based and thus may also mislead the reader.

Although the AEDs for Epidemiology and for Economics responded to the concerns raised by OGC, their replies do not address the problems associated with the sources and nature of the original underlying data.

The Commission has therefore determined that both the memoranda may be misleading and thus, under the requirements of Section 6(b)(6) of the Consumer Product Safety Act, should not be affirmatively disseminated.

However, the Commission has before it a Freedom of Information Act request for the June 13 Epidemiology memorandum. We believe that the Commission should be committed to conducting its business in public to the fullest extent permitted by law. The Commission therefore determines that the June 13 Epidemiology memorandum should be disclosed in response to FOIA requests, so long as it is accompanied by copies of this statement, the June 13 Economics memorandum, the June 23 OGC memorandum, the June 30 and July 15 memoranda responding to OGC, and the transcript of the witness' testimony upon which the Epidemiology memorandum is based. This additional information will help place the Epidemiology AED's June 13 memorandum in its proper perspective.

Moreover, in order for FOIA requesters to understand the context in which all of these memoranda should be placed, the Commission determines that FOIA requests for any of the above memoranda must receive this entire package of information.

Carol G. Dawson

Mr. **Dannemeyer**. Mr. Scanlon made reference to this report of Assistant Executive Director Verhalen which attempted to estimate the comparative risks between ATV's and snowmobiles and found that if anything, snowmobiles presented a greater risk of injury or death to the user than ATV's. When you are making a judgment as to whether or not you are going to invest money, $50,000 to have a comparative study, and you have some staff input indicating that snowmobiles are more dangerous than ATV's, doesn't that suggest to you as a matter of judgment that before you proceed, you ought to have this comparative data checked out?

Ms. **Dawson**. I think that the report you mentioned done by Dr. Verhalen was subsequent to the Commission decision to which you referred.

Mr. **Dannemeyer**. That was in June of 1986. Well, I view of the line of cases that hold that the Government must produce comparative risk data showing that the allegedly defective product presents a relatively greater frequency of risk than other similar products, don't you think that you should develop this information before you go forward with these recommendations?

Mr. **Scanlon**. I agree, Mr. Chairman. I just want to make one correction for the record. The ATV Task Force did recommend that the Commission undertake a comparative use survey, but there was a vote and I believe it was 4 to 1 or 3 to 1 against.

Mr. **Dannemeyer**. You were a voice in the wilderness.

Mr. **Scanlon**. I was.

Ms. **Dawson**. I would like to comment on that, too. The staff members that I was referring to who advised us at the time were attorneys assigned to the ATV task force. They were the ones that said it was not required.

Mr. **Dannemeyer**. There is an old saying, I guess, that when you hire a lawyer, you take their advice or you get another lawyer, and it strikes me, frankly, that you are dealing with a matter of judgment and comparative data. I respect counsel's opinion who told you that, but in one case that did litigate on this issue, and it was only a trial court judge, he did indicate that comparative data is a condition precedent for the Government to be able to proceed with enforcement with respect to the risk of products.

You know, you are in the business of being a Commissioner, and that is a fairly fundamental point of law that it strikes me that people in your business disregard at your peril. You know, if I were sitting in the Justice Department evaluating whether or not to take on the responsibility for prosecuting this case on behalf of CPSC, to be perfectly candid with you, I would be pretty much influenced by the fact that you haven't to date developed these comparative studies.

Mr. **Florio**. Would the gentleman yield just for a question to the general counsel?

Mr. **Dannemeyer**. Yes.

Mr. **Florio**. Is there anything in the statutory mandate of the Commission to require comparative studies prior to rulemaking or action being taken?

Mr. **Lacy**. No, Mr. Chairman. You are correct that there is nothing in the statute. However, I have to point out that there have been cases in which the issue of comparative data has been raised.

The recent decision in the X-car case, for example, through judicial determination included comparative data.

Mr. FLORIO. It is within the jurisdiction of the Commission to make the determination as to what are comparable items? Clearly there are differences of circumstances, differences of terms and conditions under which the products are used here such that the Commission in its discretion would make the determination that three or four items you are talking about now are not sufficiently close to be comparable.

Mr. LACY. There is no statutory requirement that comparable data be shown.

Mr. FLORIO. There is no statutory definition of comparable, is there?

Mr. LACY. No, there isn't. However, the fact of the matter is that section 12 is a unique remedy. It is extraordinary in its features, and the fact that section 12 allows us to evade the more elaborate notice and comment of section 9 and section 15, for example, puts an awesome duty on the part of the court in reviewing the materials that are presented.

So I think that this issue is one that will certainly be undoubtedly discussed in the litigation.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. SCANLON. Could I make one comment, Mr. Chairman, if I may?

Mr. FLORIO. Yes.

Mr. SCANLON. The advanced notice of proposed rulemaking, which was voted on by the Commission in 1985, specifically stated that ATV's were more dangerous than snowmobiles and dirt bikes. The industry, shortly after that was voted on, called that to our attention and said that was not the case. That is the reason why I thought we had to have this comparative use study so we knew——

Mr. FLORIO. Yes, but it was not the basis for the finding, I assume, was it? There had to be a more substantial basis than just the fact—I am not even sure I understand or accept and acknowledge this idea of relevance, the relative hazard of competing products being the basis for action or not taking action. It is an interesting sort of gratuitous observation, but I am much more persuaded by the numbers of injuries and deaths that your record presumably incorporates as justification for taking the action.

Let me recognize the gentleman from Utah.

Mr. NIELSON. Thank you, Mr. Chairman.

CPSC's data shows very few injuries for children under 12 when they ride the 50, 60 cc ATV's designed for that purpose. That is the conclusion of the Economic Analysis Directive of CPSC. Yet you are telling the public that children under 12 cannot safely ride any ATV, and you have industry over Commissioner Dawson's dissent to stop selling ATV's for children under 12. Why?

Mr. SCANLON. I will respond initially, Mr. Nielson. Our staff found that children under 12 lacked adequate physical size and strength, cognitive abilities, motor skills and perception.

Mr. NIELSON. Even for the 50, 60 cc?

Mr. SCANLON. That's correct. And this analysis was done by our human factors staff. I would ask Mr. Marchica, if I may, to elaborate.

Mr. **Nielson**. I would like to ask Commissioner Dawson why she dissented in that view.

Ms. **Dawson**. Yes. I stated at the time that I did not think our data supported that kind of a request, and I still believe that.

Mr. **Nielson**. Isn't it true, Commissioner Dawson, that most of the accidents of children under 12, almost all of them, are when they are riding as a passenger or operating a larger vehicle on their own?

Ms. **Dawson**. Yes, that is what our studies show.

Mr. **Nielson**. And yet the industry warns against both practices, does it not? It says they have to be 14, and it also says that they should not ride double on ATV's?

Ms. **Dawson**. In point of fact, many children do, though, ride the bigger machines.

Mr. **Nielson**. Yes. We heard testimony about one this morning. If CPSC's Human Factors don't support the ban that the CPSC is suggesting, why are we not seeing many injuries to children under 12 on such ATV's? Why aren't we seeing the accidents in the 50, 60 cc ATV's if, as you suggest, they should be banned?

Mr. **Marchica**. Mr. Nielson, first off, we are seeing some accidents by youngsters on 50 and 60 cc machines. Unfortunately, we are seeing a great deal of accidents by children under 12 on the adult-size ATV's. The work of the ATV Task Force showed that because of their physical size, their strength, cognitive abilities, motor skills and their perceptual abilities, children under 12 typically cannot operate a motorized vehicle.

Mr. **Nielson**. Even the 50, 60 cc?

Mr. **Marchica**. Yes, sir. This is based on expert opinion. The difficulty arises because the larger ATV's are very attractive to children, and we are seeing quite a few of them being hurt on the large ATV's.

Mr. **Nielson**. Mr. Scanlon, is it possible that your ban on the 50, 60 cc ATV's may, in fact, make the children want the bigger ones and they actually cause a greater rate of injury because the small ones are not available to them? Could that not contribute to the accident rate?

Mr. **Scanlon**. That could happen, Mr. Nielson. My hope would be that parents using their judgment would not allow children to escalate to the larger size ATV's.

Mr. **Nielson**. But if because of your decision that is the only option available to them, are they not likely to be tempted to unwisely use the bigger machines and to buy them?

Mr. **Marchica**. Mr. Nielson, I would respond by saying we have a very difficult problem with the children getting injured and dying on all-terrain vehicles, and there are a number of ways of attacking that problem. The first has to do with parents understanding the fact that kids under 12 shouldn't even be on ATV's, that kids under 16 should only be on the youth size ATV's, and 16-year olds and adults are capable of operating the adult-size ATV's.

In addition, the States have a responsibility here. The States can have regulations that will prohibit the use of all-terrain vehicles by children on public lands. That is one of the reasons we sent letters to the governors, to explain to them that we are seeing a lot of these accidents occurring to children under 16.

Mr. Nielson. Mr. Chairman, I would like permission to enter the statement of Mr. Rinaldo, the opening statement.

Mr. Florio. Without objection, the gentleman from New Jersey's statement will be made part of the record.

[The opening statement of Hon. Matthew J. Rinaldo follows:]

Opening Statement of Hon. Matthew J. Rinaldo

Mr. Chairman, I am pleased to join you at this hearing to examine all-terrain vehicles, or ATV's, and to oversee Federal actions to protect consumers of these vehicles.

The number of injuries and death, particularly of young children, demand that we do everything possible to see that, where consumer protection and consumer education can be improved, they are.

In 1986 alone, these vehicles accounted for 86,000 injuries and 155 deaths. Nearly one-half of these accidents involved children under the age of 16.

The Consumer Product Safety Commission has sought to address this problem through a series of actions, including establishment of an ATV Task Force, publication of an Advance Notice of Proposed Rulemaking, working with the industry on voluntary standards, and its most recent decision to bring an action in court under section 12 of the Consumer Product Safety Act.

Clearly, there are enough questions surrounding the use of ATV's to demand the attention and concern of the Commission, as well as of this subcommittee.

It is appropriate for the subcommittee to look into the potential harm to consumers, and I think our effort today should be to assist help promote consumer awareness, consumer education, and consumer protection. If it is found that some of these vehicles are inherently unsafe, I also think it is the obligation of the Commission to address that issue squarely and forthrightly.

The House Government Operations Committee last year issued a report citing the hazards posed by ATV's, and as I mentioned earlier there have been an alarming number of deaths and injuries from these devices, particularly among children.

I think the Commission has attempted to grapple with what is a difficult issue, and I look forward to hearing the testimony of the Commissioner's, as well as our other witnesses.

In particular, I would like to extend a personal welcome to Commissioner Graham, who worked on my staff a number of years ago.

Mr. Chairman, I yield back the balance of my time.

Mr. Nielson. We would like also to have the statement of the serious injury and death, the warning which is placed on all ATV's, in the record.

Mr. Florio. Without objection.

Mr. Nielson. A letter from the Specialty Vehicle Institute of America to David Gelrich, producer of "60 Minutes," outlining their objections to that program.

Mr. Florio. Likewise.

Mr. Nielson. Also a letter from Consumer Products Safety Commission to Leonard DeFiore, Executive Director, from Nick Marchica, Chairman of the All-terrain Vehicle Task Force.

Mr. Florio. All of the correspondence the gentleman seeks to put into the record will be put into the record.

Mr. Nielson. And from Dr. Verhalen as well, and the letter to Jon Leonard of the Suzuki Motor Company. All those will be put in the record?

Mr. Florio. Without objection ordered.

Mr. Nielson. Now let me ask the big one. Can you put the Government Operations Report and the dissenting views thereto into the,record?

Mr. Florio. That has been done already at the request of Mr. Bernard.

Mr. Nielson. And also the report, including dissenting views?

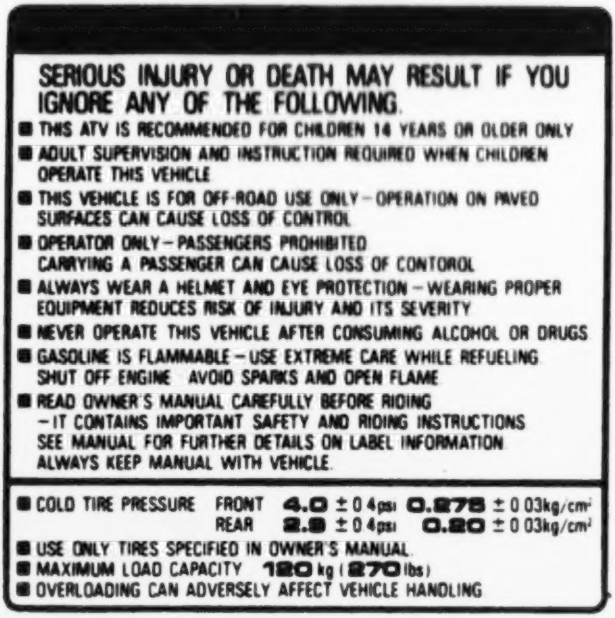
Mr. FLORIO. The entire report, which includes the dissenting views.

Mr. NIELSON. All right. I guess that is all the damage I can do right now. Thank you, Mr. Chairman.

[Testimony resumes on p. 161.]

[The following materials requested by Mr. Nielson follow:]

WARNING LABEL



SERIOUS INJURY OR DEATH MAY RESULT IF YOU IGNORE ANY OF THE FOLLOWING.

- THIS ATV IS RECOMMENDED FOR CHILDREN 14 YEARS OR OLDER ONLY
- ADULT SUPERVISION AND INSTRUCTION REQUIRED WHEN CHILDREN OPERATE THIS VEHICLE
- THIS VEHICLE IS FOR OFF-ROAD USE ONLY—OPERATION ON PAVED SURFACES CAN CAUSE LOSS OF CONTROL
- OPERATOR ONLY—PASSENGERS PROHIBITED
  CARRYING A PASSENGER CAN CAUSE LOSS OF CONTOROL
- ALWAYS WEAR A HELMET AND EYE PROTECTION—WEARING PROPER EQUIPMENT REDUCES RISK OF INJURY AND ITS SEVERITY
- NEVER OPERATE THIS VEHICLE AFTER CONSUMING ALCOHOL OR DRUGS
- GASOLINE IS FLAMMABLE—USE EXTREME CARE WHILE REFUELING.
  SHUT OFF ENGINE. AVOID SPARKS AND OPEN FLAME.
- READ OWNER'S MANUAL CAREFULLY BEFORE RIDING
  —IT CONTAINS IMPORTANT SAFETY AND RIDING INSTRUCTIONS
  SEE MANUAL FOR FURTHER DETAILS ON LABEL INFORMATION.
  ALWAYS KEEP MANUAL WITH VEHICLE.

- COLD TIRE PRESSURE FRONT **4.0** ± 0.4psi **0.275** ± 0.03kg/cm²
  REAR **2.8** ± 0.4psi **0.20** ± 0.03kg/cm²
- USE ONLY TIRES SPECIFIED IN OWNER'S MANUAL.
- MAXIMUM LOAD CAPACITY **120** kg (**270** lbs)
- OVERLOADING CAN ADVERSELY AFFECT VEHICLE HANDLING

SVIA
Specialty
Vehicle
Institute of
America

April 22, 1987

60 min:

Mr. David Gelber, Producer
CBS Television, "60 Minutes"
555 West 57th Street
New York, New York 10019

Dear David:

I had the opportunity to view the segment you produced on ATVs and felt it necessary to air my thoughts. I believed your initial statements to me regarding objective reporting and that you wanted to show all sides of the issue. I now believe that you probably began this assignment with only one goal in mind -- to dramatically portray the vehicles as very dangerous and the industry as totally irresponsible. You certainly achieved that goal, but unfortunately, with some very inaccurate information and statistics.

I thought that "60 Minutes," more than any other show, would have the resources to check out the accuracy of its information and interviews prior to including them in its broadcasts. Maybe the writers' strike has prevented you from doing as thorough a job as you would like, but I do not feel that constitutes sufficient grounds for error.

For instance, Commissioner Anne Graham said that CPSC data does not support the industry view that rider misuse is involved in a majority of the accidents. I have enclosed a CPSC memorandum dated November 7, 1986, in response to Congressman Doug Barnard in which the Commission's ATV Task Force chairman clearly states that the conduct of ATV riders was a significant determinant of injuries. The memo also discusses the number of injuries that could have been prevented if proper rider safety procedures had been followed.

60

You also relied heavily on the information provided by "motorcycle expert" Randy Nelson who has testified against the ATV industry in lawsuits. I assume that you were not aware that at a recent hearing in San Diego Nelson's testimony was disqualified by the court. Your "expert" is reportedly an engineering school dropout. His videotape demonstration has also been disqualified by independent engineering experts (with degrees) testifying that

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Nelson purposely shifted his weight during the test to make certain the vehicle would flip after six previous unsuccessful attempts. While you portrayed his staged demonstration as a common occurrence, that vehicle reaction is said to only happen with the speed, bump size and spacing, and rider weight shift carefully calculated and practiced to achieve a front flip-over.

youth testing

Additionally, Congressman Barnard said in his interview that he has no record that the vehicles were safety tested for youngsters. Included in the public record of the May 21, 1986, ATV hearings chaired by Congressman Barnard for the Subcommittee on Government Operations, American Honda submitted a statement that the youth vehicles were tested with youngsters ages seven and eight. As I told you and Ed Bradley, one of the biggest areas of misuse is children riding adult sized machines.

I know that you probably tend to take the word of your interviewees, yet you specifically told them what we had to say and allowed them to rebut our statements while you never allowed us to comment on the inaccuracies of others being interviewed. In all, you broadcast more than 10 statements that were totally inaccurate.

Finally, you conveniently forgot to mention that there was a 13 percent decrease in the accident rate in 1985 and another 14 percent in 1986, or that the public could get free ATV safety materials by calling 1-800/447-4700. Obviously, that would have shown that the industry is doing something to help solve the accident problem and that would have probably weakened your one-sided story.

In summary, the resulting production was, in my opinion, misleading, inaccurate, incomplete, and unfair. Saddest of all, you did not inform your viewers of the safety solutions we have available right now to save lives and prevent the injuries you so sensationally dramatized.

Regards,

Alan R. Isley

Alan R. Isley
President

ARI/nf

Enclosures

MEDIA RESPONSE TO 60 MINUTES

The industry believes that the "60 Minutes" segment on ATVs was misleading, inaccurate, incomplete and unfair. In our review of the show we uncovered at least 12 statements that were absolutely not true.

For instance, Commissioner Anne Graham said that CPSC data does not support the industry's view that rider misuse is involved in a majority of ATV accidents. The CPSC ATV Study clearly states that the majority of ATV accidents involved several types of rider misuse, including children riding the wrong sized ATVs, carrying passengers, use of alcohol, use without helmets, and use on paved roads. A November 7, 1986 memorandum from the Commission's ATV Task Force chairman clearly supports that the conduct of ATV riders was a significant determinant of injuries.

The program failed to show the overwhelming majority of satisfied, safe users and responsible dealers. Also, information that we supplied to the show was never addressed, and the show conveniently used unauthorized statements by one dealer's salesman and selected situations and statistics to negatively portray the entire industry and the vehicles.

JOHN
LAVI
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Unfortunately, the program failed to show the safe use of the vehicles for both recreational and utility purposes and that, contrary to Commissioner Graham's view, the successful safety efforts of the industry have helped reduce the accident rate by 13 percent in 1985 and an additional 14 percent in 1986. The industry is committed to continuing our safety efforts to reduce ATV accidents and injuries to the greatest extent possible.

UNITED STATES GOVERNMENT
Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

7 NOV 1986

TO: Leonard DeFiore, Executive Director

FROM: Nick Marchica, Chairman, All-Terrain Vehicle (ATV) Task Force

SUBJECT: September 17, 1986 Letter from Congressman Barnard

On September 17, 1986, Congressman Barnard, Chairman of the Commerce, Consumer and Monetary Affairs Subcommittee of the House Committee on Government Operations, requested of the Chairman an analysis of any inaccuracies and misinterpretations found by CPSC technical staff in the Government Operations Committee's July 16, 1986 report entitled, "Consumer Product Safety Commission's Response to Hazards of Three-Wheel All-Terrain Vehicles (ATVs)." This request was in response to a letter from Chairman Scanlon to Congressman Barnard dated August 1, 1986, in which he stated that CPSC technical staff believes that the Committee Report contains inaccuracies and misinterpretations of data.

The ATV Task Force established by the Commission has successfully completed its assigned tasks within the schedule set by the Commission. The "Report of the CPSC All-Terrain Vehicle (ATV) Task Force: Regulatory Options for All-Terrain Vehicles" and the 12,000 page ATV Technical Package prepared by the Task Force have been provided to Congressman Barnard's Subcommittee per his request of September 17, 1986. In his letter, Congressman Barnard states that the Government Operations Committee report "relies almost entirely on data prepared by the CPSC staff, as reflected in the Advance Notice of Proposed Rulemaking published in May 1985, and on other Commission documents." He further stated that "If the Commission has changed any of its findings and conclusions since that time, or has found any of its previous documents or information releases to be inaccurate, the Subcommittee and the public should be so informed, together with the data upon which such changes are based."

In the 5/31/85 Advance Notice of Proposed Rulemaking (ANPR), the Commission *preliminarily* determined that there *may* be an unreasonable risk of injury associated with the use of ATVs which may be sufficiently severe to require regulatory action by the Commission (emphasis added). The Commission adopted an action plan intended to assist it in obtaining further information on the hazards associated with ATVs. The ANPR clearly states that the preliminary determination of unreasonable risk was based on available data, that further information on the hazard was needed, and that public comment on the data in the ANPR and the ATV safety issue generally was requested.

Major Areas Of Concern

There are two major areas of concern about the Committee's report. First, the Commission did not have the data required for a determination of the relative risk of injury or death nor an analysis of ATV accidents by initial event and sequence of events prior to the release of the September 1986 Hazard Analysis. This critical information is needed to develop remedial strategies.

As indicated in the Hazard Analysis, some of the most significant high risk factors in accidents resulting in injuries and deaths on 3- or 4-wheeled ATVs were drivers under 16 years of age on adult-sized ATVs (particularly drivers 14 to 15 years old), ATVs with larger engines (225 ccd or more) which represented the majority of ATVs with front and rear suspensions, and driver inexperience. The relative risk for drivers with less than one month of experience was 13 times the average.

Other high risk factors were not previously known to the Commission. For example, when a helmet was not worn, the relative risk of a fatal or hospitalized head injury was three times as high and the relative risk of an emergency room treated head injury was twice as high as when the injured person wore a helmet. The estimated probability of an accident with a four-wheeled vehicle was roughly half the probability of an accident with a three-wheeled unit. The annual risk of death was the same for both three- and four-wheeled ATVs.

The analysis of ATV accidents by initial event and sequence of events also was not known to the Commission prior to the release of the September 1986 Hazard Analysis. A major difference in accident scenarios between three- and four-wheeled ATVs involved the percentage of ATVs that overturned (or tipped): 74% of the three-wheeled ATVs compared to 59% of the four-wheeled ATVs. This finding corroborated engineering conclusions that the dynamic stability of a four-wheeled ATV is better than that of a three-wheeled ATV.

Second, the Committee focused its attention solely on three-wheeled ATVs, and did not make any findings or recommendations relative to four-wheeled ATVs. However, the injury and death figures cited in the Committee's report include three- and four-wheeled ATV data. For example, of the 415 ATV related deaths cited in the report, four-wheeled ATVs were reported in 28 of the 174 incidents in 1985 (and in 10 of the 241 incidents in prior years). Also, the December 1985 "Preliminary Report on the Survey of All-Terrain Vehicle Related Injuries" (1985) found that 87 percent of the ATVs involved in injuries had three wheels and 13 percent had four wheels. In the Chairman's August 1, 1986 letter he said the ATV Task Force was evaluating the performance characteristics of both types of vehicles and that until these data are analyzed there was no factual basis for the Committee to assume that one type of vehicle was safer than the other.

Additional ATV Task Force Comments

The report also states that there are "a disproportionately large number of spinal cord injuries resulting in victims becoming paraplegics and quadraplegics." The location of this statement appears to attribute it to CPSC data. The National Electronic Injury Surveillance System (NEISS) data do not show this, nor does a recent medical review of indepth investigations. None of the data available to the staff at this time allow us to determine whether or not the number of spinal cord injuries is disproportionate to other injuries.

On page 29 of the Committee report, total sales were projected at 780,000 for 1985. This figure was from the ANPR. However, in Economic Analysis's Market Sketch (December 1985), 1985 shipments were estimated at 575,000 to 625,000. The actual figure turned out to be about 595,000.

Additional Staff Comments

Because of the large amount of emphasis on ATV Injury Epidemiology the Associate Executive Director for Epidemiology, Dr. Robert Verhalen, has provided specific comments on the Committee's report. Keyed to specific pages of the report are some of Dr. Verhalen's observations.

> "(Page 1)
> Twice on this page, and at several other locations throughout the document, the report refers to the unprecedented level of deaths and injuries associated with ATVs.
>
> The deaths and injuries are not at all unprecedented. Skateboards, for example, over the four year period 1974-77 virtually 'exploded' from under 4,000 injuries per year to about 155,000 injuries per year. Bicycles are typically reported to be associated with well beyond a half million injuries each year. While deaths reportedly associated with skateboards during the above mentioned period only numbered about 25, deaths associated with a number of other products usually run considerably higher than are reported for ATVs. For example, during the same four year period covered by the ATV report (1982-85), swimming pools were involved in more than 2,700 deaths, bathtubs and showers were involved in nearly 1,700 deaths, mobile homes were involved in nearly 1,500 deaths, and bicycles were involved in almost 3,600 deaths--to mention only a few other products.
>
> (page #3)
>
> Beginning at the bottom of page 2 and continuing at the top of page 3, the report argues that ATV related injuries are 'substantially higher than proportionate figures for minibikes/trail bikes and snowmobiles.' This is precisely the sort of misinterpretation which I was trying to correct with

my June 13, 1986 memo. The authors of the report have interpreted the data presented in the ANPR at face value, failing to recognize or give credence to earlier caveats about the non-comparability of the data---.

Proportionate figures... would be those which take into account some common factor which would make them comparable, such as a rate of incidents per some meaningful unit, such as exposure (in hours, days, or some other index of use). This is essential if comparisons are to be reasonably made. Accordingly, injuries per 1,000 vehicles in use, adjusted for exposure (ATVs, mini/trail bikes, snowmobiles with relative exposure values of 10:2-3:1 respectively yields:

ATVs	=	4.5 per 1,000 vehicles in use
mini/trail bikes	=	7.9-11.9 per 1,000 vehicles in use
snowmobiles	=	8.5-12.7 per 1,000 vehicles in use

As I made clear in my June 13 memo, these estimates are not definitive. The empirically based, comparable exposure surveys we requested funding for could have provided what we needed for a definitive analysis. Absent that however, based on the testimony at the Commission ATV hearings, these estimates are still the best information available. Also, as I pointed out in the June 13 memo, one cannot attach any statistical significance to the above differences.

(Page #11)

In the first full paragraph on the page, the report avers that 'evidence indicates that even experience in riding does not offer any real protection since many of those injured are experienced riders.' This suggests that 'protection' must be 100% effective if it is to be considered 'real.' Almost nothing can offer 'real' protection under these terms. With respect to experience, the 13 times greater risk of injury among novices during their first month would seem to be evidence that experience does confer some protection, albeit imperfect.

(Page #13)

Item (10) dismisses the role of human error and places virtually total blame for accidents on performance and handling characteristics. The evidence however reveals that.

- 70-80% of victims did not wear helmets, without which the relative risk of fatal or hospitalized injury was three times as great as among 'wearers.'
- Drivers of four-wheeled ATVs carrying passengers were at 20% greater relative risk of being involved in a fatal accidents.
- Drivers of three-wheeled ATVS on paved surfaces were at 150% greater relative risk of being involved in a fatal accidents.
- Roughly 17,000 (20%) of all injuries were to passengers. If these people had not been passengers, they would not have been injured.

In each of the above, while handling characteristics played a role, it was not necessarily the definitive role. Clearly the "conduct" of the driver in terms of his decisions (to not wear a helmet, to carry a passenger, to drive on a paved surface without other, non-ATV traffic) was a significant determinant. Very few accidents can be shown to have a single cause."

In Summary , since issuance of the ANPR and the Committee's Report the staff has obtained a great deal of additional technical information on this very complex safety issue. This information which will be considered by the Commission at the November 19, 1986 ATV briefing will provide a basis for Commission action and for addressing the hazards associated with ATVs.

[illegible]
for public release
Initial ____ Date 4/6/87

UNITED STATES GOVERNMENT
Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D.C. 20207

TO Nick Marchica, Chairman, ATV Task Force

DATE October [illegible]

FROM Dr. Robert D. Verhalen, AED, EP

~~REST~~

SUBJECT Comments on GOC Report on ATV's

Because of the large amount of emphasis on ATV Injury Epidemiology, Chairman Scanlon has asked me to provide you with comments on the ATV report put out by the House Government Operations Committee. Below, keyed to specific pages of the report are my observations.

(Page #1)

Twice on this page, and at several other locations throughout the document, the report refers to "the unprecedented level of deaths and injuries" associated with ATVs.

The deaths and injuries are not at all unprecedented. Skateboards, for example, over the four year period 1974-77 virtually "exploded" from under 4,000 injuries per year to about 155,000 injuries per year. Bicycles are typically reported to be associated with well beyond a half million injuries each year. While deaths reportedly associated with skateboards during the above mentioned period only numbered about 25, deaths associated with a number of other products usually run considerably higher than are reported for ATVs. For example, during the same four year period covered by the ATV report (1982-85), swimming pools were involved in more than 2,700 deaths, bathtubs and showers were involved in nearly 1,700 deaths, mobile homes were involved in nearly 1,500 deaths, and bicycles were involved in almost 3,600 deaths--to mention only a few other products.

(Page #2)

In describing the annual increases in reported injuries in the second and third paragraphs the report presents the annual increases as a percentage from the most recent year progressively back in time. This maximizes the differential so long as the numbers are increasing. This is misleading and tends to distort the relationships. An example of one kind of distortion this can lead to is shown on the next page.

Year	Cases	Cum.Sum
1	1	1
2	3	4
3	12	16
4	15	31

Year 4 was 25% higher than year 3, 500% higher than year 2, and 1,500% higher than year 1. (In all, however, there were only 31 incidents over the four year period).

or

Year	Cases	Cum.Sum
1	12,000	12,000
2	13,000	25,000
3	15,000	40,000
4	18,000	58,000

Year 4 was 20% higher than year 3, 38% higher than year 2, and 50% higher than year 1. (In all, however, there were 58,000 incidents over the four year period).

Which of these is the greater problem?

The argument that there were 185,300 ATV cases over the four year period also serves to maximize the apparent severity of the problem. For purposes of comparison, during the same four year period bicycles are estimated to have been involved in approximately 2.2 million injuries, and swimming pools are estimated to have been involved in 325 thousand injuries.

(Page #3)

Beginning at the bottom of page 2 and continuing at the top of page 3, the report argues that ATV related injuries are "substantially higher than proportionate figures for minibikes/trail bikes and snowmobiles." This is precisely the sort of misinterpretation which I was trying to correct with my June 13, 1986 memo. The authors of the report have interpreted the data presented in the ANPR at face value, failing to recognize or give credence to earlier caveats about the non-comparability of the data, e.g., July 1985 Fact Sheet, attached.

Proportionate figures (see note a, following) would be those which take into account some common factor which would make them comparable, such as a rate of incidents per some meaningful unit, such as exposure (in hours, days, or some other index of use). This is essential if comparisons are to be reasonably made. Accordingly, injuries per 1,000 vehicles in use, adjusted for exposure (ATV's mini/trail bikes snowmobiles with relative exposure values of 10:2-3:1 respectively yields:

ATV's = 6.5 per 1,000 vehicles in use
mini/trail bikes = 7.9-11.9 per 1,000 vehicles in use
snowmobiles = 8.5-12.7 per 1,000 vehicles in use

As I made clear in my June 13 memo, these estimates are not definitive. The empirically based, comparable exposure surveys we requested funding for could have provided what we needed for a definitive analysis. Absent that however, based on the testimony at the Commission ATV hearings, these estimates are still the best information available. Also, as I pointed out in the June 13 memo, one cannot attach any statistical significance to the above differences.

Note a : PROPORTIONATE: being in proportion; having the same or a constant ratio: may apply to several closely related things that change without altering their relations (as in rates and ratios where comparability is sought to ensure fair comparisons).

(Page #5)

They report that the Commission has employed investigations, information dissemination and education to lessen the toll. In fact, investigations are not conducted as remedial measure. Their purpose is diagnostic, and they could not have been effective"...in lessening the toll."

The report also points out that "the bulk of the hundreds of deaths and the tens of thousands of...injuries... have occurred since the Commission first became aware of the ATV problem". Clearly it stands to reason that the "bulk" of cases we use in our analysis will have occurred since we first became aware of the problem--if the problem is growing. We chose a (cutoff) date for the beginning of data inclusion in our analysis, and we accumulated more cases as time moved along. This is necessary in order to keep the data from shifting around constantly. One fixes a discrete time period for the data (to be included) so that each question can be comparably addressed. We do not include cases which have occurred prior to the cutoff date--which in most products will also number in the hundreds or thousands. Also, the bulk of cases under analysis will very often have been received (or have occurred) after beginning to study the problem.

(Page #7)

At the end of the first paragraph the report observes that"... the toll of fatalities is four times"...the number cited when the Commission first decided to act. In fact, this does not mean that the toll has increased, merely that the cases we know about have increased. Many (184) of the 311 death reports accumulated since April 1985 had already occurred before the end of April 1985). We merely increased our awareness of them (e.g., collected them).

(Page #11)

In the fourth line on the page the report states: "the basic fact remains that deaths and injuries are unreasonably high for the universe of riders". This argues in favor of using "rates" rather than merely "raw numbers" as has been suggested by some Commission staff.

In the first full paragraph on the page, the report avers that "evidence indicates that even experience in riding does not offer any real protection since many of those injured are experienced riders". This suggests that "protection" must be 100% effective if it is to be considered "real" Almost nothing can offer "real" protection under these terms. Even a ban would leave some individuals unprotected--those who choose not to "turn in" their machines, those who ride the machines of others, etc. In 23 years of accident research experience, I an unaware of any remedial action which has actually eradicated a hazard. With respect to experience, the 13 times greater risk of injury among novices during their first month would seem to be evidence that experience does confer some protection, albeit imperfect.

(Page #13)

Item (2) essentially restates information which I discussed in my observation about page 2.

Item (4) misinterprets again the data on relative risks for ATVs mini/trail bikes and snowmobiles. See my discussion of the subject in comments about page 3.

Item (10) dismisses the role of human error and places virtually total blame for accidents on performance and handling characteristics. The evidence however reveals that.

- 70-80% of victims did not wear helmets, without which the relative risk of fatal or hospitalized injury was three times as great as among "wearers".
- Drivers of four-wheeled ATVs carrying passengers were at 20% greater relative risk of being involved in an injury producing accidents.
- Drivers of three-wheeled ATV's on paved surfaces were at 150% greater relative risk of being involved in a fatal accidents.
- Roughly 17,000 (20%) of all injuries were to passengers. If these people had not been passengers, they would not have been injured

In each of the above, while handling characteristics played a role, it was not necessarily the definitive role. Clearly the "conduct" of the driver in terms of his decisions (to not wear a helmet, to carry a passenger, to drive on a paved surface with other, non-ATV traffic) was a significant determinant. Very few accidents can be shown to have a single cause.

(Page #20)

Item (iii) again, they refer to the relative difference between ATV's mini/trail bikes and snowmobiles. My discussion about their page three still applies.

(Page #21)

Item (b) We would not deny that death or serious injury can manifest itself regardless of whether or not rider misuse is involved. Neither, however, can one deny that rider misuse exacerbates the problem, and that any success at curbing misuse would have an ameliorative effect.

(Pages #22)

Item (b) With respect to "benefits", "recreation" is a large part of every American's life style; a multibillion dollar enterprise; and it has substantial psycho-social and health benefits.

With respect to the statement that ..." the risk of injury is severe, including paralysis and death", the same can be said of swimming and ice skating (for example).

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

July 1985

FACT SHEET ON ATVs *

The CPSC is continuing to investigate the safety of 3 and 4-wheeled, all-terrain vehicles. These vehicles, called ATVs, are small, motorized recreational cycles with balloon-like, soft tires designed for off-road use on a variety of terrains such as fields, dunes, hills and gullies, and over mud, sand, shallow water and snow.

SHIPMENTS. In the past five years, the popularity of ATVs has soared, showing nearly a five-fold increase in shipments:

YEAR:	1980	1981	1982	1983	1984
SHIPMENTS:	136,000	197,000	306,000	484,000	650,000

Industry sources estimate that about 650,000 units will be sold in 1985, bringing the expected number of ATVs in use by the end of 1985 to about 2.5 million — a sizeable jump from the 1.81 million units in use at the end of 1984.

INJURIES. This rise in shipments has been accompanied by a surge in hospital-treated injuries, increasing in 1984 by more then 13 times the figure in 1980, and almost eight-fold since 1982:

Est. Hospital Emergency Room Treated Injuries Associated with ATVs

YEAR:	1980	1981	1982	1983	1984
INJURIES:	4,929	6,008	8,585	27,554	66,956

During the first six months in 1985 (Jan-June), there were an estimated 52,000 ATV-related injuries treated in hospital emergency rooms. This figure is a 70% increase over the number of similar injuries treated for the same six-month period in 1984.

The estimated frequency of injury (unadjusted for hours of use) associated with such other recreational off-the-road vehicles as mini bikes/trail bikes and snowmobiles is notably less than that for ATVs:

	Est. Hospital Emergency Rm. Treated Injs. (1984)	Percent of Cases Hospitalized (1984)	Est. Number in Use at End of 1984	Est. Hospital Emerg. Rm. Treated Injs. Per 1,000 Vehicles In Use	Est. Hospital Emerg. Rm. Treated Injs. Per 1,000 Vehicles In Use
ATVs	66,956	13.5%	1.81 million	37.0	4.99
Mini Bikes/ Trail Bikes	33,636	5.1%	1.5 million	22.4	1.14
Snowmobiles	8,076	10.4%	1.0 million	8.1	0.84

[* Excerpted by the Office of Commissioner Stuart M. Statler, (202) 634-7710, from briefing materials prepared by CPSC staff]

IN REPLY REFER TO
8340

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
UKIAH DISTRICT OFFICE
P.O. Box 940
Ukiah, California 95482

916-978-4707

DEC 30 1986

REC[illegible]D
JAN 5 [illegible]7
GOVERN[illegible]NS

Jon Leonard, Government Relations
Suzuki Motor Co., LTD
3251 East Imperial Highway
Brea, California 92621

Dear Mr. Leonard:

I would like to express my appreciation for your loan of two Quad Traks this past year. My staff has made extensive use of these vehicles for many projects that could not have been accomplished otherwise. I have enclosed some slides that show some of the typical activities we have used the ATV's for.

The Bureau has been so impressed by these vehicles that we would like to purchase them as we did for the previous LT185s in 1984. We have budgeted the sum of $1,800.00 for the purchase of the two Quad Traks. If this sum is acceptable we will forward a purchase order in that amount. We also are interested in extending the loan program with a request for two of the 4 wheel drive Quad Runners. We have a need for additional traction and power to safely pull heavy loads up trails. (See photo #9).

While our predominant use of the quad runners has been in trail construction and maintenance, over the past year we have expanded our use of the ATV's into many other programs.

	ATV Hours	BLM
Watershed Rehabilitation	220 hrs.	$ 550.00
Wildlife Monitoring	40 hrs.	100.00
Recreation use and Visitor Services Patrol	80 hrs.	200.00
Trail Construction	500 hrs.	1,250.00
Cadastral Surveying	160 hrs.	400.00
SVIA Instruction/Training	320 hrs.	800.00
Trail Maintenance	480 hrs.	1,200.00
TOTAL	1800 hrs.	$4,500.00

The combined savings of over $4,500.00 was saved in transportation of personnel, supplies, and materials resulted because we were able to use the ATV's instead of other less efficient pick-ups or walking.

It might interest you to know a more detailed description of the kinds of work we have accomplished using the ATV's. The following summarizes some of the projects we have completed using the ATV's.

Watershed Rehabilitation

Over the past two years we have been active in a program of revegetating fire breaks and closing travel ways. (See Slide #15-17). These ways are ripped and water barred by bulldozers and then are covered with seed, fertilizer and straw. Our crews used the ATV's to haul large quantities of materials over very rough country, where another vehicle would have caused damage to the seed bed.

Wildlife Monitoring

During certain times of the year our wildlife biologist must travel into areas where other vehicles, including motorcycles, would cause damage to sensitive soils. During one particular project the Quad runners were used to transport large steel enclosures to prevent animals from eating the plants. In this way we can determine what types of plants the wildlife is eating.

Recreation Use Supervision

Three areas of public land within the Clear Lake Resource Area: Cow Mountain, Knoxville, and Walker Ridge are heavily used for off road vehicle recreation. To effectively manage and control ORV use, we require a BLM presence on a reliable, rugged, and safe ATV. Your Quad runner 230 shaft drive is such a vehicle. My recreation planner has been able to cover more area, thus providing more presence to the public. The visitor service personnel and event monitors have also been able to cover more area in less time than ever before. Because of this increase efficiency, public lands are more likely to remain available to off road vehicle riding instead of being closed due to our inability to effectively monitor and manage this type of recreation.

Trail Construction

Over this last four years the Suzuki Quad runners have helped to construct every mile of the over 60 miles of trail plus 6 miles of hiking trails within the Clear Lake Resource Area. As you can see from Slides #1-12, we have used the Quad's to transport personnel, supplies, and heavy materials over long distances to the trail construction equipment. We have made several modifications to racks, and frames to accommodate equipment used in trail construction. Our major savings have been in the transportation of "Turf Supports" blocks used to harden trail tred where a trail crosses a creek or in a soft-muddy area. These blocks weigh approximately 64 lbs. each and, as you can see, we carry several at a time, and sometimes even lose a few. However, without the Quads we never could have done it.

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Cadastral Survey

The local Cadastral Survey field office has used the Quad's for transporting their personnel and delicate survey equipment over extremely rough roads and trails. This has reduced the time it takes to get into a back country job site and certainly helped them complete projects on time.

Trail Maintenance

Along with trail construction, my maintenance crew has used the Quad Trak's to carry personnel and equipment over many miles of trail to perform light to heavy maintenance. Because of the versatility of the Quads, the crew can carry everything they need from chain saws to water jugs. It would be impossible to maintain as many trails as we do without the use of ATV's.

ATV Training

One of my staff, Cam Lockwood, has worked with the Specialty Vehicle Institute of America to become certified as a Chief Instructor. He has used the Quads to train over 70 BLM, Forest Service, County and State of California employees in ATV safety and riding techniques. (See Slide #13-14 and photographs). Cam will continue to provide this valuable training to other Districts and States. We appreciate the local Suzuki Dealership "Jim and Jims" loan of additional ATV's when we have conducted training.

As you can see we have put the Quads to the test, and they have performed extremely well. I appreciate your interest and assistance in helping us better manage the public lands. Thank you again for your generosity in loaning BLM Clear Lake Resource Area the Quads.

Sincerely,

Gretchen Smyth

Gretchen Symth
Clear Lake Resource Area Manager

enclosures

Consumer Product SAFETY ALERT

FROM THE U.S. CONSUMER PRODUCT SAFETY COMMISSION, WASHINGTON, D.C. 20207
May 1987

CPSC Urges Caution for Three- and Four-Wheeled All-Terrain Vehicles

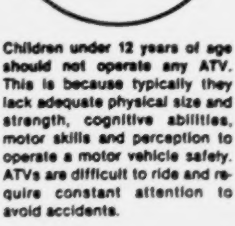
The U.S. Consumer Product Safety Commission issues this updated safety alert to warn consumers of the potential operator risks associated with three- and four-wheeled all-terrain vehicles. All-terrain vehicles, often called ATVs, are motorized cycles with three or four large, soft tires and are designed for off-road use. Most units are sold for recreational use. In recent years, their popularity and sales have soared.

CPSC's injury statistics have indicated a dramatic increase in injuries and deaths associated with ATVs during the 1982-86 period and a continued high number of injuries and deaths in 1986. The CPSC estimates that the number of ATV-related injuries treated in hospital emergency rooms rose from 8,600 in 1982 to 86,400 in 1986. As of March 2, 1987, CPSC had documented reports of 696 ATV-related deaths (1982-1987). Of these 696 fatalities, 313 victims (45 percent) were under 16 years of age and 139 victims (20 percent) were under 12 years of age. Children are a particularly vulnerable population. Almost half of the injured persons were also under 16 years of age.

The average risk of injury from ATV riding is high. Over its estimated seven-year life, the average ATV has a one-in-three chance of being involved in an accident resulting in injury. In 1986, about 11 percent of the persons treated in hospital emergency rooms were hospitalized. The majority of accidents occurred when the ATV overturned after hitting a terrain irregularity or obstacle, or while turning or traversing a slope.

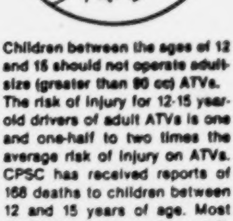
Based on information obtained from a 1985-86 study, CPSC alerts consumers to the following safety information:

ATVs are not toys.



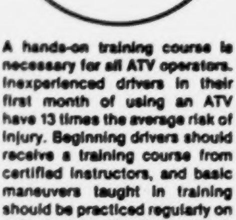
Children under 12 years of age should not operate any ATV. This is because typically they lack adequate physical size and strength, cognitive abilities, motor skills and perception to operate a motor vehicle safely. ATVs are difficult to ride and require constant attention to avoid accidents.

Don't let children under 16 ride adult- size ATVs.



Children between the ages of 12 and 15 should not operate adult-size (greater than 90 cc) ATVs. The risk of injury for 12-15 year-old drivers of adult ATVs is one and one-half to two times the average risk of injury on ATVs. CPSC has received reports of 168 deaths to children between 12 and 15 years of age. Most deaths have occurred on adult-size ATVs.

Take a training course.

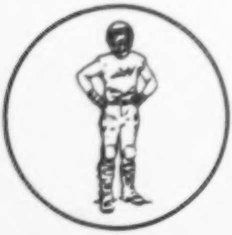


A hands-on training course is necessary for all ATV operators. Inexperienced drivers in their first month of using an ATV have 13 times the average risk of injury. Beginning drivers should receive a training course from certified instructors, and basic maneuvers taught in training should be practiced regularly on safe terrain. Children should ride only under close adult supervision. The CPSC injury survey showed that almost half of the drivers had less than a year's experience, and one-fourth had less than one month's experience.

CPSC Urges Caution for Three- and Four-Wheeled All-Terrain Vehicles

(continued)

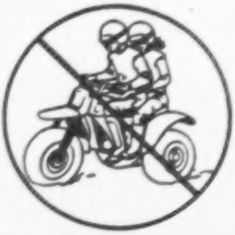
Helmets save lives.



Helmets could have saved the lives of approximately 25 percent of the people who died from head injuries in ATV accidents.

In the CPSC injury survey, three-fourths of the drivers with head injuries were not wearing an approved helmet. Without the protection of a helmet, the risk of head injury was twice as high as when the injured person wore a helmet. Over half of the injured persons had worn no protective equipment, such as helmets, gloves and heavy boots.

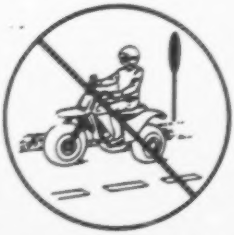
No passengers!



Do not ride double.

ATVs are designed for one driver and no passengers and have unique handling characteristics. The presence of a passenger seriously impairs the driver's ability to shift weight in order to steer and control the ATV. In the CPSC injury survey 31 percent of the drivers carried passengers on the ATV, and 20 percent of the injured people were passengers.

No paved roads or alcohol!

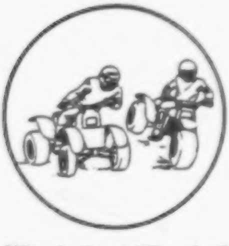


Almost 10 percent of the injuries and over 25 percent of the deaths occurred while operating the ATV on paved roads.

These accidents occur because of collisions with other vehicles and because ATVs are difficult to control on pavement.

In 30 percent of all fatal ATV accidents, some alcohol use was mentioned.

Four-wheelers are more stable than three-wheelers.



Although the stability of all ATVs is low, the stability of four-wheeled ATVs is better than the stability of three-wheeled ATVs.

The risk of an accident on a three-wheeled ATV is about one and one-half to two times the risk on a four-wheeled ATV.

Fully-suspended ATVs handle better than front-only or tire-only suspended ATVs.

CPSC engineering tests show that the handling performance of a fully-suspended ATV is significantly better than that of front-only or tire-only suspended ATVs.

CPSC also offers these safety tips for ATV riders:

- Before you ride an ATV, always read the owner's instruction manual and follow the manufacturer's guidance for use, maintenance, and pre-use checks.
- Drive carefully and use good judgment when using your ATV.
- Observe local laws or regulations and any regulations which have been established for public recreational areas where ATV use is permitted.

If you want to know more about ATV safety and CPSC's actions concerning ATVs, write to Freedom of Information Division, Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

Mr. **Florio**. The time of the gentleman has expired.

The gentleman from Ohio is recognized.

Mr. **Eckart**. I wouldn't want the printing bill for all that unanimous consent request.

Mr. Chairman, it has been over 2 years since the Commission voted to publish your proposed rule, a rule that did not even suggest mandatory standard or protection. Given, Mr. Chairman, your reliance on voluntary standards because the mandatory rulemaking process often takes longer, I am now concerned that we are in unconscionable delaying tactics.

The industry knows that you are not proposing mandatory rules because you like voluntary rules. Ms. Graham refers to the fact that the folks with whom voluntary rules will have to emanate know this. We seem to be running around like a bunch of chickens chasing each other with nobody going anywhere and nothing happening.

Mr. **Scanlon**. I would disagree with you, Congressman. Yes, I am a big proponent of voluntary standards. I think they effect safety more quickly and more readily. But, this is probably one industry where I am very disappointed in the progress, both with phase one and phase two of the proposed voluntary standard. However, a number of things have been done since the ANPR that you referenced was voted on in 1985.

I mentioned earlier, or Mr. Marchica mentioned earlier, letters to governors saying that States had a real responsibility here to address helmets being used, off-road usage, alcohol consumption, problems relating to alcohol consumption, et cetera.

Mr. **Eckart**. But Mr. Chairman, it seems to me as if you are passing the buck. You are telling other folks to do what you have the legal and statutory authority to do.

Mr. **Scanlon**. We are not passing the buck. We are doing a number of things all at one time. Attached to my personal statement, which I have provided for the record, is a chronology of the activities that the Commission has undertaken beginning in early 1985. I think this will give you an almost month-by-month chronology.

Mr. **Eckart**. Which I read, Mr. Chairman. We have also gone from 161 deaths to almost 700 deaths in that chronology, and the bottom line is we still ain't nowhere.

Mr. **Scanlon**. But that is not the case. There are a number of things that have been done. We have voted for a section 12, imminent hazard, the first, I believe, in 9 years at the Consumer Product Safety Commission. The vote for the advanced notice of proposed rulemaking in 1985 was the first in 3 years, the prior one having been adopted in 1982. I think all the things listed in the chronology, and I would be happy to enumerate those, will show that the Commission has been actively involved with addressing the safety problem.

Mr. **Eckart**. Let me ask the big question, then, Mr. Chairman.

Mr. **Scanlon**. We have done four consumer alerts, the most recent on May 7, which have been duplicated and published in hundreds of newspapers and have been read by tens of thousands of people.

Mr. **Eckart**. But they are still selling them and accidents are still occurring and people are still dying.

Mr. Chairman, let me go to the generic question, Mr. Chairman and Mr. Chairman. What incentives exist for a recalcitrant industry to act responsibly if they know that you are not going to go to a mandatory rulemaking process?

Mr. **Scanlon**. We are in it. We are in a mandatory rulemaking process. We have been in it since 1985. We had to establish a case, which took 18 months, but which I think most people believe was done quite expeditiously when you consider the magnitude of the problem. That study was completed on September 30, the due date. We have, each month since that time, taken different actions to effect safety.

Mr. **Florio**. I ask unanimous consent the gentleman have an additional 3 minutes.

Mr. **Eckart**. I thank the gentleman.

If I may proceed, Mr. Scanlon, I want you to focus on the bigger question, not ATV's. Given your reliance on voluntary standards, have not you sent the message to industries generally that you want them to clean up their house first? I think we would concur that that would obviously be a better way to do it, but if folks know you view mandatory as the last stop on the train, are we not going to have to get into these scheduled lynchings on a regular basis before folks do what they ought to do as the right thing to do?

Mr. **Scanlon**. No, Mr. Eckart, that has not been the case here. We voted for an advanced notice of proposed rulemaking in 1985. That was the beginning of the mandatory process at the Commission. During that time, since that time, we have sent staffers, we have worked diligently for a strict voluntary standard. As I said earlier, this is probably one of the first times in the 4 years that I have been on the Commission where the industry has acted in a recalcitrant way. This is unusual. This industry has been very slow in working with both phase one and phase two of this voluntary standard.

Mr. **Florio**. Will the gentleman yield?

Mr. **Eckart**. Yes, I will yield.

Mr. **Florio**. To supplement the thrust of the point the gentleman is making, why shouldn't an industry be slow, not only because the norm is not the mandatory standard, but in this instance we have the mandatory standard but we have had announced here for the public record that you don't have the resources to enforce it if you wanted to. So this whole combination of reluctance to be mandatory and then reliance upon another agency's discretion to bring action, and then if they decide not to, you don't have the resources to bring the action anyway.

Mr. **Scanlon**. Mr. Chairman, if I may, let me remind you that the 1981 Amendments to the Consumer Product Safety Act state that we are to pursue the voluntary standard effort first. We are complying with those amendments. This is what we are attempting to do.

Mr. **DeFiore**. Mr. Chairman, I can understand your frustration with the progress made. The Commission, the staff has also been frustrated with the industry's lack of performance on the voluntary standards. As Chairman Scanlon indicated, we are required to defer to those up until such point as we find that they are not effective. The Commission made that finding in December when it instituted a section 12 action which addresses precisely the areas which in the voluntary standard had not been adequately addressed.

Mr. **Eckart**. If I may reclaim my time and ask unanimous consent to proceed for 2 additional minutes.

Mr. **Florio**. Without objection, so ordered.

Mr. **Eckart**. What I am suggesting is that you may have backed into that, having to go to a section 12, yourself by over-reliance in the public on voluntary standards.

Mr. Lacy, if I can give you the microphone. Statute requires that the Justice Department give a decision on referrals to them within 45 days. We are way past 45 days. How do you attend to effect what you say is a hope that something is going to happen in the next 3 weeks?

Mr. **Lacy**. With all due respect, Mr. Eckart, your interpretation of the law differs from my interpretation of the law. The section 27 creates, in effect, an optional power on the part of the Commission to take further action.

Mr. **Eckart**. Correct.

Mr. **Lacy**. The fact of the matter is that we really have no indication that the Justice Department is not going to take this case.

Mr. **Eckart**. But doesn't the statute on Justice referral require them to advise an Agency which has referred a case to them for prosecution that a decision be rendered in 45 days whether they are going to take the referral.

Mr. **Lacy**. This power is only in the CPSC and it is only a power to be exercised by the CPSC. The Justice Department is within their right now to consider the case, and frankly, I think that in view of the fact that we have a 14,000-page record and that we have been preparing these documents and these studies over almost a 2-year period, that it is to the advantage of consumers and to the U.S. taxpayers in bringing whatever case we do bring to give the Justice Department the time they need to fully consider all the facts and all the evidence that we have so that we go into court prepared.

Mr. **Eckart**. I am a former prosecutor, too. I couldn't agree more. How many times, Mr. Lacy, have you met with Justice to discuss this referral?

Mr. **Lacy**. Our staff has met on numerous occasions. We are in daily telephone contact. I personally have been to the Justice Department on one occasion, and I have met with the attorneys handling the case over there on at least 3 occasions and have been in regular telephone contact.

Mr. **Eckart**. Are you aware that Justice Department lawyers have met with lawyers for the industry, have solicited and received briefs from the industry and manufacturers of ATV's, and that in at least two other circumstances, Justice Department officials have held meetings with the industry without CPSC being present?

Mr. **Lacy**. I am aware of meetings, and let me respond by saying there is no inappropriateness or impropriety to be associated with these meetings.

Mr. **Eckart**. I didn't ask that question. I just wanted to know if you knew of these meetings.

Mr. **Lacy**. Yes, we do.

Mr. **Eckart**. And do you approve of the Justice Department meeting with folks on a case to which you have referred to them without you being present?

Mr. **Lacy**. Well, let me say I am aware of telephone conversations. I am not aware of specific meetings that have occurred. However, I think that the fact of the matter is we have a very close working relationship with the Justice Department, we share information, we know about the meetings they are having, they know about the meetings that we propose to have. We are coordinating our efforts. I think it is only natural for the attorneys that we are seeking to have represent us to familiarize themselves with the case.

Mr. **Eckart**. Does not your record of 14,000 pages include voluminous testimony, objections and commentary from industry—manufacturers and sales representatives?

Mr. **Lacy**. Well, let me say that CPSC has met with attorneys from the manufacturers on two occasions, and I will be happy to provide to the committee logs of these particular meetings. The fact of the matter is that when industry requests a meeting to be informed about what actions the Government is proposing to take, it is all together proper and fitting to have those meetings. This does not presuppose that any discussion that will take place at these meetings is inappropriate in any way.

Mr. **Eckart**. Given the fact that industry got their bite at the apple with you during the entire regulatory process of 14,000 pages, what do you suppose it is that the industry is telling the Justice Department now?

Mr. **Lacy**. I have to respond to that by saying that if the industry requests a meeting, we know that discussion that is going to take place is going to be appropriate or we are not going to participate in the meeting. I don't think it is appropriate to create some self-imposed restriction that we not talk to the industry. What we are trying to do is protect consumers.

Mr. **Eckart**. I am not talking about you talking to the industry, Mr. Lacy; I am talking about the Justice Department talking to the industry given a 14,000-page transcript which they have had a full and fair opportunity to make their case.

I thank you for your forthrightness, and I thank the Chairman for his extended courtesy.

Mr. **Florio**. The gentleman has performed a great public service, I think, and quite frankly, Mr. Lacy, I am astounded at your sense of propriety of what is proper and what is not. The gentleman has developed the point and you have talked about the voluminous record that has developed. What is it that could be evolving out beyond the scope of the record that the Justice Department would have any interest in? Rather than go into the details, I am just surprised, quite frankly, of your sense of what is proper and what is not proper, and we are going to have to develop that a bit more.

I yield to the gentleman from New Mexico.

Mr. **Richardson**. Thank you, Mr. Chairman.

I apologize for being late.

Chairman Scanlon, how many ATV injuries and deaths occurred since the CPSC first asked Justice to pursue the section 12 litigation statistics on that?

Mr. Scanlon. Since February 1, 1987?

Mr. Richardson. Yes.

Mr. Scanlon. There is an average, Mr. Richardson, of 7,000 injuries a month and an average of about 20 deaths a month—roughly maybe 25,000 injuries and approximately 65 deaths.

Mr. Richardson. I am interested in the State role here. Obviously, there are some States that have these vehicles more than others, my State being one. I recently was informed that the industry met with the Governor of New Mexico about discussing some State legislation. My understanding is that Arizona has passed legislation dealing with ATV's, Texas is in the process of passing legislation, and Arizona has passed some.

Are any commissioners aware of the scope of this legislation? Take the Arizona legislation. Is it adequate? What does the legislation do? How does it deal, for instance, with helmet and other safety laws? I am asking a question because I am uninformed, not because I have a particular——

Mr. Scanlon. We have that information available. I am going to ask Mr. Marchica to provide it.

Mr. Marchica. Currently, Mr. Richardson, Arizona only requires the vehicle have some sort of muffler protection. Texas basically has the same requirement as well as that if you use it on public lands, you should be wearing an approved helmet.

I am not aware of exactly what the legislation is in those two States. I would assume that it is based on draft model legislation that the industry has prepared. That legislation deals with a number of issues, such as the minimum age of the operator, the setting up of a program to fund off-road riding areas and educate and train operators, whether they are under a certain age or all operators. That is the gist of the industry's model legislation.

Mr. Richardson. And in the judgment of the Commission, this is not sufficient?

Mr. Marchica. This is one of a number of ways of attacking the injuries and deaths that are occurring with ATV's. The Commission has directed the staff to provide information to any State or any organization that would like to have State legislation and regulation, and we have done so. We are supportive of doing that.

Mr. Richardson. And the State of New Mexico has asked, do you know?

Mr. Marchica. We have provided information to the State of New Mexico as well as all the other States on what we found in our 18-month study.

Mr. Scanlon. Mr. Richardson, I personally met with members of the Rhode Island State Legislature. I have been invited by the Governor of Michigan to address some legislators for a Michigan legislative proposal. There are a number of other actions we have done with the States.

Mr. Richardson. I thank the Chairman.

Mr. Florio. Are there other members that seek recognition? The gentleman from Utah.

Mr. Nielson. Yes, I would like to ask some questions.

Mr. **Florio**. The gentleman is recognized for 5 minutes.

Mr. **Nielson**. Thank you.

A followup to the question by Representative Dannemeyer about the comparative survey that you declined to do. You said the ATV industry currently asserts—I am looking at the testimony—that ATV accident rates are not out of line with those of other recreational vehicles, particularly trail bikes and so on. You determined you didn't want to do a study or didn't need to do a study, over your objection, Mr. Chairman. Why did you make comparisons assessing the vehicles in your advanced notice of proposed rulemaking, which suggested the ATV rate was higher than other vehicles, if you didn't have such a study.

Mr. **Scanlon**. A good question. It was a mistake.

It was a mistake in the advanced notice of proposed rulemaking. It was my suggestion, when it was brought to our attention that we may not have the data to support it, that we should have a comparative use survey, and if the data indicated that snowmobiles and dirt bikes were about on average with ATV's as far as injuries go, then we would have that part of the ANPR changed.

Mr. **Nielson**. Commissioner Graham, you apparently objected to having a comparative study, as did Commissioner Dawson, on the basis that their CPSC policy doesn't look at comparative risk. Is that true?

Ms. **Graham**. Not on my part, Congressman. I was not at the Commission at the time. However, I think the real issue is the danger of the ATV and that we don't really need the comparative data study to see that people are dying and getting injured daily.

Mr. **Nielson**. Isn't the CPSC policy not to worry about comparative risks?

Ms. **Graham**. As Commissioner Dawson pointed out, our attorneys told us that it was not necessary on this issue.

Mr. **Nielson**. Even though you made assertions of eight times the rate and so forth in your report? Did you take into account per-hour use in your rates that you were reporting at all?

Ms. **Graham**. I would have to ask Nick Marchica to answer that question, but I would reiterate that I think they are very dangerous machines and that we have a statutory mandate to do something about them. We are supposed to protect the consumer.

Mr. **Nielson**. The Commission has advocated the industry be required to provide mandatory training for all purchasers. Is there any other industry which requires mandatory training, to your knowledge, Mr. Scanlon? Is there any other?

Mr. **Scanlon**. I am not aware of any.

Mr. **Marchica**. Mr. Nielson, on that point, however, in October 1984 the Commission had a hearing to which they invited the all-terrain vehicle industry to come to talk to them about the rising number of injuries and deaths that we were seeing. At that point in time——

Mr. **Nielson**. Do you require mandatory training for skis or snowmobiles or hang gliders, in any of those?

Mr. **Marchica**. The Commission does not require training on those products. However, at the time that this hazard first came to our attention, it was the intent of the industry to develop a training program that would attempt to stop the increasing injuries and deaths. They made projections at that time that they would train upwards of 40,000 people in 1985, and significantly more than that in the out years.

Unfortunately, that did not occur. It was our opinion as the All-Terrain Vehicle Task Force that hands-on training is an absolute necessity to operate an all-terrain vehicle safely. It has been our opinion through the voluntary standards process and in our briefings to the Commission that this is a must.

Mr. **SCANLON**. May I add something to that, Mr. Nielson?

Mr. **NIELSON**. It is up to the Chairman.

Mr. **FLORIO**. Certainly.

Mr. **SCANLON**. There is a ratio of 13 to 1, which indicates injuries and deaths occur 13 times more often during the first 30 days of operation of an ATV. That is why the Commission thinks training is very necessary, just looking at that data.

Mr. **NIELSON**. How do you require the consumer to take advantage of this training? How do you force consumers tem to take this——

Mr. **SCANLON**. I don't think you can force consumers to take training, but I think it certainly could be offered by the manufacturer at the time of purchase. I see no problem with that, and I proposed this to the industry in 1985. At that time they said that they would undertake a training program, and they had projections of some 100,000 people being trained within a year. I think, to date, less than 5,000 have been trained over a 3-year period.

Mr. **NIELSON**. Mr. Chairman, I am aware my time has expired again. I have a number of other questions. May I submit them in writing to the Commission?

Mr. **FLORIO**. The Commission will be pleased, I am sure, to receive your questions and, I am sure, will expeditiously respond.

Mr. **NIELSON**. There are only 23 of them.

Mr. **ECKART**. Mr. Chairman, may I proceed for just 1 minute.

Mr. **FLORIO**. Certainly. The gentleman is recognized.

Mr. **ECKART**. I apologize because the gentleman did ask me, but from my colleague from Utah's last round. First of all, I have owned, driven or raced snowmobiles, dirt bikes, ATV's, skateboards. Anything you-all do is better than doing nothing. I point out to my colleague, however, that States can require stickers, States can require licensing. You have to have, in my State, an addendum to your motor vehicle license to drive a motorcycle, and to use certain facilities where I run dirt bikes, you have to pass a competency test before you can run their course, and I think that is good.

The Chairman's response is most appropriate. There is a tremendous correlation between the newness of the rider and incidence of accidents, so that experience factor is absolutely essential in terms of training, so you are headed in the right direction. But anything you do is better than absolutely nothing.

I am concerned, Mr. Lacy, that you get a fair shake out of Justice because you are right, your resources are limited, and we intend to hold their feet to the fire, which we can do a lot more. I am absolutely essentially critical of those who are trading in these vehicles as toys. That is my greatest fear, Mr. Scanlon, and the advertising I see and the non-use of protective equipment and the non-use of competency training, and put your kid on it and let him run down the street is an absolute invitation to a disaster.

I would just yield back the rest of my time.

Mr. FLORIO. Let me conclude by expressing our appreciation for your presence and say that, as we have already informed you, we are going to have a number of other hearings in the process of reauthorizing the Commission. What is perhaps the most troubling aspect of today's testimony was the reference to your historic experience, having 20 people die a month, which means if we are going to wait 3 weeks before the Justice Department comes back and tells us as to whether they are going to take this action or not, there will be 15 people dead as a result of us waiting this 3 weeks.

Now, I accept the fact of the limitation of resources. I am not comfortable with it, as I am not comfortable with the limitation of resources in a number of other Agencies that are effectively precluding them from doing their job. I would much prefer someone come forward honestly and say, well, change the mandate, don't require us to do these things, or else come forward and say we need more resources, which certainly has not been the case from a number of the Agencies.

I appreciate the good faith of the Commission saying that they are going to stay on top of the action of the Justice Department and that you are framing responses regardless of what the response is that comes back to you, that you are inclined to take appropriate action in accordance with your recommendation, and that we can look forward to seeing you again in the very, very near future, at which time you will have responses to the questions that we have offered to you today. I trust that we can look forward to having that time of cooperation.

Mr. SCANLON. You will receive it, Mr. Chairman. We will look forward to coming back to discuss this and other issues.

If I could just make one correction to the record for the benefit of Mr. Nielson; on March 28, 1985, there was an Office of General Counsel memorandum to the Commission which advised that comparative data for snowmobiles and motorcycles was required as a minimum for a section 12 enforcement action.

Mr. NIELSON. But that was rejected later, however.

Mr. SCANLON. That is true, and I will provide that for the record.

Mr. FLORIO. Thank you very much. We appreciate your help.

Our next panel of witnesses is made up of Dr. Mark Widome, Department of Pediatrics, the Milton Hershey Medical Center, Hershey, PA, and Ms. Mary Ellen Fise, Product Safety Director, Consumer Federation of America.

We are pleased to have our next two witnesses. As with our other witnesses, if they have formal statements, they will be put into the record. We would appreciate their going forward in a summary fashion.

Ms. Fise, we are pleased to hear from you. It is my understanding that you have asked permission to have a short tape presented to the committee; is that correct?

Ms. FISE. Yes, that is correct.

STATEMENTS OF MARY ELLEN FISE, PRODUCT SAFETY DIRECTOR, CONSUMER FEDERATION OF AMERICA; AND MARK D. WIDOME, ON BEHALF OF AMERICAN ACADEMY OF PEDIATRICS

Ms. **Fise**. I would call to the committee's attention this is a videotape that was provided to us by Ellen Kingsley, a consumer reporter at WUSA-TV here in Washington, DC. It has already been aired. We are offering it to the committee to illustrate some of the hazards and marketing techniques associated with all-terrain vehicles.

[Film shown.]

Mr. **Florio**. We have a vote that is scheduled right now. We will take a brief 10-minute recess and reconvene and hear from our two witnesses.

[Brief recess.]

Mr. **Florio**. The subcommittee will reconvene. Please proceed.

Ms. **Fise**. CFA believes that CPSC's mismanagement on their regulatory responsibility with respect to all-terrain vehicles is an example of this Agency at its worst. If you were to ask each of the parents whose children died or are sentenced to life in a wheelchair about ATV actions, I'm sure you will hear again and again, why didn't someone tell us the vehicles were so dangerous, why does our Government allow such a product to be sold?

The unfortunate reply is that the Agency charged with protecting consumers from ATV hazards has shirked its responsibility, has dragged its feet and has acquiesced industry's timetable for the development of a voluntary standard.

We heard today from the Commission about the numbers of injuries and deaths. I'd like to turn to this whole voluntary standard issue. Obviously, one option for the Commission is to establish a mandatory standard, but under their law, they must defer to the voluntary standard when that standard addresses the risk of injury and there is likely to be substantial compliance by the industry.

In the ANPR, the advanced notice of proposed rulemaking on ATV's invited the public to submit to CPSC a statement of intention to develop and modify the voluntary standard. It's clear that the Consumer Product Safety Act does not require the Commission to wait until a voluntary standard is developed. In fact, the Commission's own regulations state they will not delay the commencement of a mandatory rulemaking in order to permit an outside party to develop a voluntary standard.

In the case of ATV's, the ANPR did not announce the beginning of a mandatory rulemaking proceeding. Therefore, the Commission was able to side step or avoid that regulation I just spoke about and to sit back and wait while the voluntary standard was being developed and then taking its cue from the Commission, the ATV industry initiated this voluntary standard proceeding, but took their time in moving it along.

To make matters worse, the voluntary standard initiated does not address the most crucial technical issues relating to ATV performance, but addresses only minimum age recommendations, standardization of controls, labeling, education and training.

According to CPSC staff when they evaluated the standard, they stated that the provisions in the draft of the voluntary standard are considered to be inadequate. The staff also reported that it is unlikely that the standard will be completed in a reasonable amount of time and will adequately address ATV hazards.

CFA believes that the poor results of this rulemaking came about for several reasons. While the publication of an ANPR sent an initial signal to the ATV industry, the failure to set any time requirements for the next stage in rulemaking sent the opposite message. It has been over 2 years since the Commission decided to publish an ANPR. CPSC could conceivably delay forever.

The question becomes, how long is the Commission going to wait and will the result be adequate to address the risk of injury? Meanwhile, what about the thousands of consumers who continue to be injured or die as result of ATV use?

Unfortunately, it is the American consumers who are bearing the cost of CPSC inaction and delay and because the Government has failed to protect consumers, the tort system has had to fill the void and provide relief. It was estimated that in 1986, there were 350 cases pending against a large producer of ATV's. In discussing 21 cases with attorneys, CFA has learned that the range of compensation sought for cases involving death, paraplegia, quadriplegia, or brain damage, was between $3 million and $15 million per victim.

CFA is pleased that this subcommittee has begun a review of the ATV proceeding and we urge you to demand a comprehensive and timely action on CPSC's part. Without this pressure, it is our belief that the Commission will continue to be a lagger rather than a leader in product safety. Initially, because of your CPSC oversight and reauthorization responsibility, CFA also calls your attention to the fact that the ATV proceeding is symptomatic of the regulatory paralysis currently occurring at CPSC. There are numerous other examples where the Commission has deferred to industry's development of an inadequate voluntary standard to address consumer product hazards.

It is clear that Congress did not intend to establish and fund an agency that is willing to wash its hands of almost every safety hazard that comes to its attention. It is time to restore accountability and demand protection for consumers.

Thank you.

[The prepared statement of Ms. Fise follows:]

STATEMENT OF MARY ELLEN FISE

Good morning Chairman Florio and members of the subcommittee. I am Mary Ellen Fise, Product Safety Director of Consumer Federation of America. CFA is the Nation's largest consumer advocacy organization. Monitoring the safety of consumer products and the Consumer Product Safety Commission (CPSC) is one of the major priorities of our organization. We applaud Chairman Florio's decision to hold an oversight hearing on this very dangerous consumer product, the all-terrain vehicle (ATV).

CFA believes that CPSC's bungling and mismanagement of their regulatory responsibility with respect to ATV's is an example of the Agency at its worst. All-terrain vehicles represent one of the most dangerous products to enter our marketplace this decade. Since 1980, CPSC records show that there have been over 700 deaths and 298,000 injuries requiring hospital emergency room treatment associated with ATV use (see attached chart). Tragically, nearly half of these occur to youngsters under the age of sixteen.

Marketed to both children and adults as thrilling forms of recreation, ATV's can travel as fast as 50 miles per hour over rough and rocky terrain. Because consumers in this country are used to buying three-wheel bicycles for young children, it comes as no surprise that the perceived danger from these motorized three-wheel vehicles is grossly underestimated. For children in particular it is doubtful whether riding skills acquired and honed as a result of intensive training can counter the instinctive urge to respond to a 300 pound ATV as one would a two-wheeled vehicle.

CFA believes that if you were to talk to each of the parents of the hundreds of children who have died or are sentenced to a life in a wheelchair as a result of an ATV accident, I am sure you would hear again and again: "Why didn't someone tell us these vehicles are so dangerous? Why does our Government allow such a product to be sold?"

The unfortunate reply is that the agency charged with protecting consumers from the hazards associated with ATV's has shirked its responsibility, has dragged its feet and acquiesced to industry's timetable for the development of a voluntary standard. As a result, 15,400 more injuries have occurred just in the first 3 months of 1987 alone. Let's examine the record.

CPSC'S INEXCUSABLE DELAY

CPSC first began collecting injury and death data on ATV's in 1974. Between 1982 and 1983 there was an increase in injuries and deaths of over 200 percent and in the spring of 1984, CPSC launched an investigation. However, it was not until December 1984, after several meetings with industry, that CPSC issued its first Consumer Product Safety Alert on ATV's to warn the public of the associated hazards of such vehicles. In April, 1985, a full year after the investigation began the Commission published an Advance Notice of Proposed Rulemaking (ANPR).

One regulatory option open to the Commission was to establish a mandatory standard for ATV's. However, under section 7 of the Consumer Product Safety Act (CPSA), CPSC must defer to a voluntary standard in lieu of promulgating a mandatory standard when compliance with a voluntary standard eliminates or adequately reduces the risk of injury addressed and there is likely to be substantial compliance with the voluntary standard. As required by the CPSA, the ANPR for all-terrain vehicles invited the public to submit to CPSC a statement of intention to develop or modify a voluntary standard to address the risk posed by ATV's.

It is clear, however, that the CPSA does not require the Commission to wait until such voluntary standard is developed. The Commission's own regulations state that:

> "[O]nce the Commission has made a determination to commence a standard development proceeding under section 7 of the CPSA, it will not delay the commencement of mandatory rulemaking in order to permit an outside party to develop a voluntary standard. The Commission believes that such a policy would simply encourage industries to delay work on voluntary standards until mandatory government action seemed likely." (16 C.F.R. sec. 1032.6)

But the ANPR for ATV's did not announce the commencement of a mandatory standard proceeding, but rather stated that the Commission had not decided which regulatory option to select to address the risks of injury posed by ATV's. By publishing a vague ANPR, the Commission avoided its own regulation and was content to sit back and wait until a voluntary standard was developed. Taking its cue from the Commission, the ATV industry initiated a voluntary standards proceeding but then took their time in moving it along to fruition. To make matters worse the voluntary standard initiated by industry does not address the most crucial technical issues relating to ATV performance and handling. Instead a draft standard addressing only minimum age recommendations, standardization of controls, labeling and education and training was produced.

CPSC comment on this draft standard did not occur until September 1986. According to CPSC staff comprising the ATV Task Force:

> "Overall, the provisions in the draft voluntary standard are considered to be inadequate by CPSC staff. These provisions do not include: adequate requirements for specific and uniform labeling of ATV's; adequate minimum age recommendations; controls on ATV's; and acceptable performance requirements. The staff recognizes that the second phase of the voluntary standard's development is intended by SVIA to address performance and handling characteristics of ATV's. Until that work is completed, however, the standard cannot adequately address the risk of injury associated with ATV's." (Report of ATV Task Force, September 30, 1986, p. 14.)

Although this second phase of the voluntary standard has begun, the outlook is not promising. According to CPSC staff: "It is unlikely that the standard will be completed in a reasonable amount of time and will adequately address ATV hazards.

CFA believes that the poor results of this rulemaking came about for several reasons. While the publication of an ANPR sent an initial signal to the ATV industry, the failure to set any time requirements for the next stage in rulemaking (publication of a proposed rule) sent the opposite message. It has been over 2 years since the Commission voted to publish an ANPR. Because the rulemaking sections of the CPSA do not require any time limit between the time an ANPR is published and the publication of a proposed rule, CPSC could conceivably delay forever. So the question becomes: how long is the Commission willing to wait?; and then, will the result be adequate to address the risk of injury? And meanwhile, what about the thousands of consumers who continue to be injured or die as a result of a ride on an ATV?

Unfortunately, American consumers are bearing the cost of CPSC's inaction and delay. It is estimated that the total costs of ATV-related deaths and injuries alone in 1985 range from a conservative $659 million to a staggering $2.8 billion.[1] Because the government has failed to protect consumers, the tort system has had to fill the void and provide relief. It is estimated that in 1986 there were 350 cases pending against the largest producer of ATV's. In discussing 21 cases with attorneys, CFA has learned that the range of compensation sought for cases involving death, paraplegia, quadraplegia or brain damage, is between $3 million and $15 million per victim.

CFA is pleased that this subcommittee has begun a review of the ATV proceeding and we urge you to demand comprehensive and timely action on CPSC's part. Without this pressure it is our fear that the Commission will continue as a laggard rather than a leader in product safety.

Additionally, because of your CPSC oversight and reauthorization responsibilities, CFA also calls your attention to the fact that the ATV proceeding is symptomatic of the regulatory paralysis currently occurring at CPSC. While the deaths and injuries associated with ATV's are the most severe, there are numerous examples where the Commission has deferred to industry's development of inadequate voluntary standards to address consumer product hazards. CFA believes that a mechanism to challenge delays and weak voluntary standards must be established. It is clear that Congress did not intend to establish and fund an agency that is willing to wash its hands of almost every safety hazard that comes to its attention. It is time to restore accountability and demand protection for consumers.

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[1] See CPSC Memorandum to N. Marchica, EX-P from G. Rodgers, ECCP on Preliminary Estimates of the Costs of ATV-Related Injuries, September 24, 1986, page 2. The estimate represents only those injuries treated in hospital emergency rooms, excluding the unknown number and cost of injuries that are untreated or are treated in physicians' offices and elsewhere. In calculating the cost of a death a range of $1 million to $10 million per lost life was used. There is debate within the agency over the per life estimate. The Associate Executive Director for Economics has placed the value of a life in a range "from about $500,000 to several million dollars." CPSC Memorandum to the Commission from P. Rubin on Cost-Benefit Analysis, September 26, 1986, page 5. However, others within the Commission have suggested substantially higher figures, including an estimate of $10 million per life. CPSC Memorandum to Commission C. Dawson from H. Cohen, Office of Program Management on Cost-Benefit Analysis Paper, March 11, 1986.

APPENDIX

ATVs Deaths and Injuries [1]

	Deaths	Injuries
1980	6	4,929
1981	1	6,008
1982	26	8,585
1983	82	26,900
1984	140	63,900
1985	244	85,900
1986	195	86,400
partial 1987 [2]	9	15,400
TOTAL	703	298,022

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[1] Source: CPSC Product Summary Reports; CPSC Death Certificate Product Summary Reports; and CPSC Memorandum from L. Schachter to the Commission on Update of ATV Deaths and Injuries, April 24, 1987.

[2] Deaths occuring January 1, 1987 through March 2, 1987; Injuries occuring January 1, 1987 through March 31, 1987. Because of the time delay in death reporting it is expected that the number of deaths will increase.

Mr. Florio. Thank you very much. We appreciate your very succinct statement. Sir.

STATEMENT OF MARK WIDOME

Mr. Widome. Mr. Chairman, I'm Dr. Mark Widome. I'm a pediatrician and it says Professor of Pediatrics at the Pennsylvania State University College of Medicine at Hershey. I have submitted written testimony for the record.

I'm here today on behalf of the American Academy of Pediatrics and particularly the Committee on Accident and Poison Prevention. This committee has a 37-year history of involvement in pediatric injury control with considerable experience in identifying significant hazards and promoting effective strategies for prevention, based on our clinical experience.

I'm here today to express my professional organization's recognition of ATV injuries as the most important new product hazard with which our young patients are faced. I must express our frustration over the lack of effective, timely regulatory action regarding this product which by any reasonable standard has demonstrated itself to be unreasonably hazardous to children and adolescents.

On May 21, 1985, the American Academy of Pediatrics testified before the House Government Operations Consumer Subcommittee as to the ATV hazard. At that time, there had been 148 deaths and an annual injury rate of about 67,000. Today, 2 years later and 550 deaths later, there have now been almost 700 deaths since 1982, we come back once again. We come to remind you there have been 313 fatalities to children under 16 years of age and 139 victims of elementary school age since 1982.

Given the mandate of the Consumer Product Safety Commission, namely to act promptly and effectively to protect the public, particularly children, from hazardous products, we find no justification for failure of the Agency to take effective action. Regrettably, the public has been poorly served. Children have been poorly served with respect to the all-terrain vehicle.

We as pediatricians reject any argument that the product itself is not hazardous, only the way that it is used. The Consumer Product Safety Commission's own ATV Task Force has after careful study recognized the hazardous nature of the product, its inherent instability and the skill required to control it. The Task Force reported last September that children less than 12 are inherently incapable of operating the ATV safely and we pediatricians agree with that completely. They reported that children less than 16 were at increased risk when operating the full sized vehicles and they pointed out the inadequacy of the voluntary standards.

We have learned costly lessons over the years from this and from other products. Products must be safe given the way they are actually used, not the way the fine print on the label or in the owner's manual suggest they be used. No fine print on a label will explain away the lost lives and the disabling injuries occurring year after year.

I brought with me pictures from the product literature. I think what these pictures will show is that this is a heavy motor vehicle and one that gathers appeal from the promise of acceleration and speed and adventure of negotiating and challenging terrain. This is the appeal to the child user as well as to the adult.

We must recognize that given that the ATV is a single rider vehicle and given these recreational goals and judgments and skills and developmental ability of children, for whom they are purchased, the product is simply unsafe. We don't believe that adequate changing or a change in the labeling or adult supervision is either obtainable or realistic.

If the Commission pursues the strategy of relying solely on changing the behavior of the rider, the deaths and injuries will sadly continue. We learned this with refrigerators that don't open from the inside. We learned this with lead paint. We learned this with cherry bombs. The Committee on Accidents and Poison Prevention has been dealing with this problem in one form or another for the past 37 years.

The American Academy of Pediatrics once again today calls for the following actions on the part of the Consumer Product Safety Commission. One, recall of all three and four wheel ATV's marketed for use by children. Two, recall of all ATV's currently in use for recreational purposes. Three, a ban on future sale pending the development of an acceptable safety standard.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Widome follows:]

STATEMENT OF AMERICAN ACADEMY OF PEDIATRICS

Good morning. I am Dr. Mark D. Widome, associate professor of pediatrics at the Pennsylvania State University College of Medicine, where I am a pediatrician engaged in the full-time practice of general academic pediatrics. I am also a consultant to the Committee on Accidents and Poison Prevention of the American Academy of Pediatrics.

I am here on behalf of the Academy, an international organization representing 30,000 pediatricians who have a longstanding and well-documented commitment to protecting children from product-related injuries. In that tradition of child advocacy, I have come here today to convey to you the Academy's dismay and frustration over the continued availability to the public of all-terrain vehicles (ATV's), a product amply demonstrated to be unreasonably hazardous.

On May 21, 1985, the Academy testified as to the hazards of ATV's before the House Government Operations Consumer Subcommittee. At that time, data indicated that between 1982 and 1984 there were 248 reported ATV-related deaths, and in 1984 alone there were 67,000 injuries treated at emergency rooms. In the 2 years since that testimony, the Consumer Product Safety Commission (CPSC) has failed to take effective action to protect the public by restricting use of these vehicles.

The CPSC was established to protect the public against unreasonable risks of injury associated with consumer products. It was granted enforcement powers to address situations such as this in a swift, effective manner. We ask you to examine what has occurred during the past 2 years and to question why the CPSC has not fulfilled its responsibility to the public with regard to this product.

The CPSC preliminarily determined that there might be an unreasonable risk of injury associated with the use of ATV's. A task force was established in April, 1985 to conduct investigative surveys of ATV injuries, conduct hazard analyses, monitor the ATV industry's development of any voluntary standards, education or training efforts, and conduct public hearings to obtain and share safety information. The Commission voted on that day to commence a rule-making proceeding, and issued an advanced notice of proposed rulemaking, which was published in May, 1985. Public hearings were held in six cities across the country from May, 1985 to March, 1986. The task force report was submitted September 30, 1986, and included a number of alarming statistics gathered in the course of its exhaustive investigation. Among the major findings of the CPSC All-Terrain Vehicle Task Force report are the following:

— Children under 12 years of age are unable to operate any size ATV safely.

— Children under 16 years of age are at greater risk of injury and death than are adults operating adult-sized ATV's.

— The current draft of industry voluntary standards is inadequate in addressing the risks of injuries related to ATV's.

To date, there still has been no regulatory action taken by the Commission. In these 2 years of inaction, the death toll has risen to more than 696. The victims include 313 children under 16 years of age; 139 victims were less than 12. Two years of inaction have allowed an estimated 187,700 ATV-related injuries to occur. Pediatricians believe that this inertia must end. How many more children must we see die, must we see suffer brain injury or permanent paralysis before measures are taken to prevent these predictable, unnecessary tragedies? ATV's are not safe, particularly for children. Our children are losing life and limb because of these vehicles. We do not believe that this is a complicated issue. Unlike many of the childhood diseases with which we grapple, the cause of this carnage is not obscure.

Currently industry labeling practices provide for a minimum recommended age of only 6 years to operate ATV's with 50–60cc engines. Our in-depth comprehension of child development tells us that children lack the coordination, balance, reflexes, perception, maturity and judgment to operate these three- and four-wheeled motorized vehicles safely. No labeling, or education, or training, or practice, or supervision will provide this developmental maturity. The morbidity and mortality rates will not change as long as these vehicles are available to children.

The Commissioners spent 10 weeks reviewing the ATV Task Force report which outlined a series of recommendations involving regulatory action. Ignoring the recommendations of its own task force, the commissioners voted to direct the staff to continue to work on several educational and consumer awareness projects. In light of this action, we believe the CPSC has failed in its responsibility to protect the public.

The statistics speak eloquently. The American Academy of Pediatrics recognizes ATV's as the most serious new product-related hazard to the health well-being of children—their availability and use must be restricted. The AAP today, once again, and all the more urgently, recommends that the CPSC take the following actions:

1. Recall all three- and four-wheeled ATV's marketed for and being used by children.

2. Recall all three- and four-wheeled ATV's currently in use for recreational purposes.

3. Ban the future sale of any ATV's for recreational purposes unless an acceptable safety standard can be promulgated to deal with the hazards these vehicles present.

Mr. FLORIO. Thank you very much.

As I understand it, Doctor, effectively what you are saying is there should be recall of all of these vehicles or can you carve out any exceptions?

Mr. WIDOME. We can carve out those that are used for industrial purposes and agricultural purposes, solely for adults. We certainly would want a recall of all the ones that were sold with the intention that they be used for recreational purposes. We feel that basically three things need to be done. The product needs to be removed from the market, further study can determine whether a safer product can be brought to the market and then decide whether to do that. We feel it has to be done in that order because if it is not done in that order, additional lives will be lost.

Furthermore, we feel there is a certain urgency as we are getting into the warmer months and we are going to see increased numbers of injuries and fatalities as use increases as we get into July and August.

Mr. FLORIO. Let me just take the position that some perhaps in industry might take and some of my colleagues might take, who would take a much more noninterventionist approach to the economy than others.

If we are talking about recreational vehicles, per se, there is nothing public policy-wise offensive about having recreational vehicles—and we are talking about classifications of people who are competent to use these—why is it that it is inappropriate to have these vehicles out there, if we are going to provide for all the warnings that you or anyone else might require to be associated with these, purely on the basis of the facts that there may be inappropriate usage contrary to warnings, only on the basis of the fact that there will be a certain degree of irresponsibility.

Aren't we, to make the argument some would make, denying people their right to have recreational access on the basis of the lowest common denominator of responsible behavior in our society?

Mr. **Widome**. I guess, Mr. Florio, you are asking what is the balance between individuals' rights and our responsibility to protect children. This is a question that has come up time and time again over the years and one that pediatricians have been particularly sensitive to. The question came up with the use of car seats in automobiles. Looking beyond pediatrics, there are multiple examples of products that have been determined to be unreasonably hazardous and we have always seen fit to protect our children even at the reasonable denial of some liberties for the rest of the population. Protecting the public safety, and particularly those of children seems to be the priority in our society.

Mr. **Florio**. Ms. Fise.

Ms. **Fise**. Following up on that, Congress has decided to give this authority to this Agency to protect consumers from unreasonable risk of injury. When there is evidence of unreasonable risk of injury, then the Government has to step in. The decision has already been made that we will restrict some liberties where the public is at harm. What we are really looking at right now is whether the Commission is doing that.

Mr. **Florio**. Let me ask you a question with regard to the committee's overall responsibilities of reauthorizing—that the committee making modifications in the law to better achieve the purpose of the Commission, aren't we really facing a problem that goes beyond the words in the law but rather the philosophy of implementation?

I can conceive of a different Commission finding no difficulty in saying yes, we are supposed to use voluntary standards if they meet certain safety criteria, but per se, 20 people a month dying is indicative of the fact that existing standards are not sufficient. You could change the law but if there is the noninterventionist philosophy that drives the Commission, you are still not going to get a lot of results when you have some degree of discretion that is almost inherent in the process.

Can you make specific suggestions, and not necessarily today, but we would be pleased to receive from anyone, specific statutory suggestions that would provide for more certainty of action in certain instances.

This presentation today by the Commission was particularly disconcerting in one respect, as far as I was concerned, that this nonaggressive Commission has made the determination that the problem here is of sufficient importance to take action and yet the action has not been taken and we are going to be dependent upon someone else and their independent review of what it is that has gone forward in terms of the record, to make a determination, and then if the someone else, and in this case the Justice Department, doesn't make the determination to take action, we are going to try to reassess our inadequate resources to determine if there is something that the Commission should do.

I don't have a whole lot of confidence that we are going to have action by the Commission in the foreseeable future, however many months out it is, notwithstanding the fact that 20 people a month are dying.

We may very well have to start, and as I said earlier in this committee, at least the predecessor committee, has in other contexts developed new initiatives to induce action by commissions and agencies that have not been inclined to take action.

Dealing with EPA, we have structured something that we call "the hammer," the suggestion that there be a reasonable period of time for the Agency to use its expertise but the reasonable period of time is reasonable. At the end of that time, inaction will not be tolerated, that statutory action will take place absent a showing of some action by the Agency.

I've talked to enough of the members of this committee that they feel that in certain instances that inaction should not be tolerated. Therefore, that conceptual initiative is one that some are thinking about.

Can you give me any thoughts with regard to that type of approach?

Ms. FISE. First, I believe there are ways of amending such a statute. We would be happy to make those suggestions to the committee at the appropriate time. That law can be changed. There is what we would call undue reliance on voluntary standards. I think you have pointed out that no matter what the law is, there may be individual philosophies from the Commissioners that dictate the direction of the Commission. I think that is where your committee comes in with its oversight authority.

It's like telling a child to go do their homework and some children, you have to keep checking on them to make sure and others you can send off and they do their homework just fine. I don't mean to trivialize the Commission's responsibility. Right now, they haven't been doing their job. I believe this committee can use its oversight authority to keep inquiring until such action is taken.

Third, you touched on resources. The Commission today said, we don't have the resources to bring this case. Many times we find in dealing with them on unsafe conditions, they will say, we have a very limited budget, yet they are not willing to come forward to Congress and ask for more money. I think through authorizing legislation, that can be addressed.

I think those three areas may help.

Mr. FLORIO. We are going to hear from the representatives of the industry association and I will ask them the same question that I will ask you at this point.

Are you aware of any posed design modifications that either are being thought about or could be proposed to make this vehicle safer?

Ms. FISE. I'm not aware of any. I know this issue has been studied for the last 2 years. If you look at the statute that CPSC is operating under, in order to ban a product, they must find in addition to there being an unreasonable risk of injury, that their standards adequately address the risks. If a proposal to ban ATV's has been published 2 years ago, it is very likely that industry may have been able to come up with a standard, a way of dealing with this. I'm not a technical expert. It just brings to mind that without these things being published, there has been no pressure on industry to come forward.

Mr. **Florio**. This is not apparently the worst situation. As I said earlier in the hearing, we are going to be looking into the whole question of butane disposable lighters. We are talking about 700 people being killed in the last 5 years with ATV's. The Chairman of the Commission has represented to me that 200 people a year die as a result of butane lighters. That is certainly something that is equally as pressing.

The problem is how is the system dealing with some of these problems. My understanding is that your organization has been doing a review of the overall operations of the Commission. Are you at liberty to share with us any of your major observations?

Ms. **Fise**. I am not at this time. We are working on that report. We will be testifying before the Senate tomorrow, at which time we will release a comprehensive report on the Commission, and we will be sending that document over to you as soon as possible, perhaps as early as today, but certainly tomorrow morning.

Mr. **Florio**. We will look forward to receiving it.

I am just troubled by what I have heard today in this particular area and, I suspect, in other areas as we delve more into the Commission and all of those industries that are regulated by the Commission. I am convinced that we are going to have to do some creative, innovative thinking as to how to induce the Agency to perform in a better way than it has been performing over the last number of years.

I happen to believe, and perhaps not all in the industry agree, but I happen to think it is in the industry's interest that we do set out some rules, set out some regulations, and therefore provide the incentives for industry to respond, as contrasted with what I see right now as incentives for any industry not to respond. There is no down side, in some respects.

I guess my last observation would be the point you made about the tort law, that, as you know, we have got some product liability proposals that this committee is seriously considering, and I am trying to think of how this particular instance fits in to the proposals that we are talking about. My recollection is that under one of the proposals, if you comply with Federal standards, that you have an absolute defense.

Let's assume at some point we end up with the standard proposal that the Commission has made on ATV's. Even if that happens, I am not overly convinced that that is particularly impressive, and to go and effectively have someone come in and say we have complied with everything the Government has required us to do by way of training, optional recalls and therefore that should constitute an absolute defense for a defendant in a suit that would be initiated by someone who is injured or killed seems to me to be highly inequitable.

So that the relationship between all these subjects, I think, is obvious, and we will be looking at this issue in the context of this committee's jurisdiction over insurance, product liability and consumer protection in general.

I want to express my appreciation to the two of you for your participation, and thank you very much for your testimony.

We are now pleased to hear from Mr. Alan Isley, president of the Specialty Vehicle Institute of America.

Mr. Isley, we welcome you to the committee. We appreciate your patience for the course of the long day. We are prepared to accept your testimony and put it into the record in its entirety.

Please feel free to proceed as you see fit. We would ask that you introduce your colleague.

STATEMENT OF ALAN ISLEY, PRESIDENT, SPECIALTY VEHICLE INSTITUTE OF AMERICA

Mr. ISLEY. Thank you. My name is Alan Isley, the president of the Specialty Vehicle Institute of America. We are the nonprofit, national safety organization which was formed in 1983 and represents the four major manufacturers of all-terrain vehicles.

Mr. FLORIO. Exclusively, is that, or do you take into account other types of vehicles as well?

Mr. ISLEY. No. At the current time all of our programs are directed toward all-terrain vehicles. We do have the charter, however, to deal with other vehicles as they would come from our members' interests.

Mr. FLORIO. But your members are just the four companies that make all-terrain vehicles?

Mr. ISLEY. Yes. These same companies make other products also.

Mr. FLORIO. I see. I understand.

Mr. ISLEY. So we are not excluded from representing them in other products, but currently all-terrain vehicles are the prime focus of our activities.

I am accompanied by Mr. David Gische, our counsel.

Mr. FLORIO. How old is your organization?

Mr. ISLEY. We were formed in February 1983, so approximately 4 years, a little over 4 years.

At the outset I want to make our industry's position clear. ATV's are safe products when ridden properly, and the industry has an aggressive and far-reaching program designed to promote the safe use of these vehicles.

Since the industry began its safety programs, the use-adjusted accident rates for ATV's has declined by 11 percent in 1985, and an additional 13 percent in 1986, and the rate is apparently continuing to decline.

For 17 years, ATV's have provided recreation and utilities to millions of Americans nationwide. ATV's serve our Nation's farmers, Government and law enforcement agencies, and various commercial companies. Vehicles provide transportation to millions of fishermen, hunters and campers. In fact, CPSC surveys show that 52 percent of households owning ATV's use them for nonrecreational purposes.

During the early 1980s as ATV's became popular, there was an increase in ATV-related accidents. This trend of increased accidents accompanying a rapid rise in sales is typical of recreation products generally. The ATV industry formed the SVIA in 1983, well before the CPSC became involved with ATV's, to promote the safe use of these products.

As I will discuss in greater detail later, the SVIA is pursuing an extensive safety effort, part of which is aimed at educating ATV riders to avoid several practices which contribute to the majority of ATV-related accidents: specifically, riding recklessly, carrying passengers on vehicles which are intended for one rider only, riding under the influence of alcohol, riding on paved roads, and riding without helmets.

Unfortunately, children have accounted for nearly half of the injuries. However, CPSC studies verify that 96 percent of the accidents involving children under 12 occur when children are carried as passengers or when they ride on larger vehicles not recommended for their use. It is indeed puzzling that CPSC, over Commissioner Dawson's objections, has asked for a discontinuance of sales of the very child-sized ATV's when the CPSC staff has recognized there have been very few injuries on that child-sized model.

Most accidents could be avoided if youngsters are properly supervised, outfitted with safety equipment, do not ride double, and ride only on a model suitable for young riders.

The industry has been actively pursuing the voluntary standards which began in April 1985 with a joint meeting involving the SVIA and the CPSC staff. The particular voluntary standards process preferred by the CPSC is a time-consuming one. While it has not moved as quickly as we hoped—and I am pleased to say that despite the delay caused by the complexities of the process, which requires the consensus of over 40 nonmanufacturers who must be consulted, we have almost completed the phase 1 standard on controls, equipment labeling and are continuing to work on phase 2, performance standards.

We felt, however, that while working diligently under this procedure, it was important for the industry not to stand by passively. Instead, the industry has voluntarily adopted some of the initial draft standards, including consumer labeling and standardization of controls. A draft phase 2 performance standard was circulated last November. Only after that draft was circulated did the Commission formally authorize its staff to participate fully in the standards development process.

With these developments and the progress made at the last voluntary standards meeting of April 21, we are hopeful that phase 2 standards can be agreed upon expeditiously.

Although the Commission made voluntary standards its initial priority, we informed it that in our view, a wide variety of education and information programs, along with comprehensive State ATV laws, would have a greater impact on reducing injuries.

Our safety program includes nationwide public awareness and advertising campaigns, a toll free 800 safety hotline, information about safety in every owner's manual and in all SVIA and individual company publications, safety-oriented hangtags on every ATV, and safety videotapes in every dealership.

More than 1,000 ATV instructors are qualified to teach a 1-day hands-on course or present 50-minute or a 2-hour ATV safety seminar. Unfortunately, we have not had the enrollment in our 4½- to

6-hour hands-on training courses that we expected due to the lack of rider interest. Therefore, in addition to continuing our efforts for hands-on training, we have stepped up our other education programs in hopes of reaching as many riders and potential riders as possible.

We also firmly believe that State safety certification legislation is the most promising long-term solution. Our industry has drafted model ATV legislation for State use and is actively pressing for its enactment. Our model legislation requires proficiency certification for ATV riders and supervision of children. It requires helmets, prohibits riding on roads, carrying passengers or using alcohol while riding. Eleven States have passed ATV legislation, and bills have been introduced this year in 20 more States.

No vehicle is risk-free, but a rider following the recommended safety procedures does not face an unreasonable risk of injury on an ATV. When ATV's are driven properly by operators with appropriate instruction or experience, they are not difficult to control and can safely and effectively cope with the wide range of environmental considerations that users confront.

When one looks objectively at the CPSC's data, the injuries the Commission cites do not demonstrate any design defect in the vehicles. To provide good mobility over a wide variety of terrains, ATV's require optimum combination of stability and maneuverability. Although both of these factors are closely related to safety considerations, the CPSC examined only stability and incorrectly ignored its relationship to maneuverability.

The complex issue of vehicle performance requires consideration of the movement of riders on their vehicles and the movement of the vehicles over varying types of terrain. The CPSC's failure to examine systematically these factors makes it clear that its investigation can provide no basis for determining that there is any defect in the design of the ATV.

We believe that quality safety programs combined with State regulation can reduce injuries significantly. As I mentioned in my opening remarks, since the industry began its safety program, the ATV use-adjusted accident rate has declined by 11 percent in 1985 and by an additional 13 percent in 1986, and the rate is continuing to decline.

The industry is committed to continuing its safety programs to reduce the level of ATV-related injuries even further. Given these efforts and results, the industry respectfully submits that drastic action to limit the availability of all-terrain vehicles would be neither appropriate nor justified by the facts.

We believe that the public should be allowed to use and enjoy an innovative product. At the same time, we will continue our efforts to assure that riders are properly trained and supervised and function as knowledgeable, responsible and safe participants in ATV riding. Our programs have proven successful and we plan to continue and to accelerate our campaign to reduce further the rate of injuries associated with ATV's.

We are also willing to reinforce our commitment to work with the CPSC to achieve a common goal of reducing ATV injuries through responsible actions and effective programs.

I would be happy to address any additional questions the subcommittee may have. I should note, however, that although I will address all of your questions to the best of my ability, I am not a lawyer, an engineer or a statistician. I may be unable to answer detailed questions in those areas, but I can assure you that the industry stands willing to provide more detailed written responses for the record.

Mr. FLORIO. We have a vote at this point. We are going to take a recess for possibly 10 minutes, at which time we will reconvene for purposes of questioning.

Mr. ISLEY. Thank you.

Mr. FLORIO. The committee stands in recess.

[Brief recess.]

Mr. FLORIO. While we are waiting for Mr. Eckart's return, let me ask a few questions.

The statement you made that there were 40 people who had to be involved in any sort of a voluntary proposal, who are those? Are they suppliers or subcontractors?

Mr. ISLEY. The process which I understand by statute has to be followed by CPSC is one of a public standards making, and in this they suggested strongly that we use the American National Standards Institute. In that process, the ANSI board or staff publishes the notation that we who are the sponsor have a standards-making process going, and they invite any interested party, who can be another association, like the Society of Automotive Engineers, it can be a plaintiff bar, it can be another Government agency or it can be a private citizen.

Mr. FLORIO. So it is sort of a peer review system?

Mr. ISLEY. Exactly.

Mr. FLORIO. That is reviewing the proposals that you, the industry, have formulated?

Mr. ISLEY. We make the first draft. However, it is a consensus standard. We have the responsibility of answering to the approval of the ANSI review board any criticism or suggestions that are given to our draft standards.

Mr. FLORIO. You were talking about the phase 2 proposals in the context in which you made reference to the 40?

Mr. ISLEY. No, this was both phase 1 and phase 2. When we began phase 1, first of all, we broke it into two phases because we could recognize at the outset that we were breaking totally new ground in making standards for dynamic stability or performance standards on a moving vehicle.

Mr. FLORIO. That is phase 2, though.

Mr. ISLEY. That is phase 2. That is why we created phase 2, so that we would not delay some of the initial standards that we could accomplish in a fast period of time.

Mr. FLORIO. Phase 1 has been completed as far as you are concerned?

Mr. ISLEY. Phase 1 is now in its third and, we hope, final review by this peer review, and the industry has not waited for this review to be completed and the standard to be adopted. The industry has voluntarily complied along the way with the labeling, with the control standardization, with the warnings that are contained in this even though the process is going on.

Mr. Florio. In the context of phase 1, which, as you say, is going on, is the industry prepared to accept the responsibility to provide training for purchasers and riders?

Mr. Isley. We do not feel that a vehicle standard is the appropriate device for either imposing or enforcing an education requirement. This we have addressed through our State model laws. In all other areas it is a government entity such as a State that licenses the uses of a vehicle.

Mr. Florio. The model laws have not been uniformly adopted, and so effectively what you are saying is you are going to leave it to the discretion of the retailer as to whether or not to take——

Mr. Isley. No. The retailer, we do not believe, is involved as an enforcement authority. They do not have arrest power. They do not have the power to fine.

Mr. Florio. We are not talking about arrest power; we are talking about training assistance, whether it is going to be mandatory, as the Consumer Product Safety Commission appears to want to require, or whether it is going to be something that is going to be left to the discretion in the chain of commerce, whether it be the distributor or whether it be the manufacturer.

Mr. Isley. As was pointed out earlier, there is no format to follow here where any other retail source or manufacturing source has ever had to deliver mandatory training. We have taken the approach that we will encourage States to become involved, that we will work with the States in training instructors, we will work with the States in giving them technical information.

Mr. Florio. I understand where you are going, but obviously we are not communicating because the whole rationale for assuming voluntary standards being adequate as contrasted with the Consumer Products Safety Commission's authority to impose mandatory standards was that we presume that the industry—not the industry suggesting it to the States, but the industry would provide standards that they would all comply with.

Now, part of the industry standards in the minds of some is industry standards towards the end of having some minimum degree of uniformity for training. Now, you are telling me you agree with me to this point. My next point is that is the industry, in the context of industry standards, prepared to commit to training to be provided by industry to those purchasers or users that are designated as requiring training?

Mr. Isley. We feel we can provide uniform training both in a hands-on videotape or written form. We do not feel that we have the authority or our retailer dealers have the authority to make that mandatory upon all of the users of the vehicle.

Mr. Florio. But it would be, under that concept that you are talking about, a mandatorily provided service to purchasers of that. Obviously, you could not force purchasers to take advantage of that, but it would be there available. I think that is an important commitment.

Mr. Isley. That is right.

That is a commitment that we have not only made, we have 1,000 instructors available to teach the hands on training. Our limitation there seems to be one of insurance. There are currently 15 States that we cannot receive insurability for these courses.

Mr. Florio. That's an interesting point. I'd be interested and I am going to submit to you in writing, to your Association, some requests for information that I trust you will feel no inhibitions about providing to us.

Mr. Isley. Right.

Mr. Florio. In terms of the insurance experience, in terms of claims, some of the things we have seen, have got to have resulted in fairly substantial awards and it seems to me just in terms of cost/benefit analysis, the dollars that would be provided in training to the degree that they reduced, and one would assume they would reduce the potential for injury which has got to result in reductions of insurance costs, to say nothing of judicial costs, and I would think that the industry would be sort of clamoring to come forward with free provision of training capability for potential purchasers.

Mr. Isley. The capability is there. Our problem is we cannot apparently motivate every ATV rider to take a day out of their life and submit themselves to the training that is already available.

Mr. Florio. How about every ATV distributor? Have they been sufficiently motivated to know that it is a requirement if it is sought by the purchaser to provide training?

Mr. Isley. Yes. We have not limited our training to only being available to dealerships. I believe you have a witness that is going to testify on the next panel that can describe from the dealer's point of view. We have to define a retail dealer from a distributor who in our terminology is our member company, in essence, the manufacturer, importer, distributor is one entity. The retail dealer is an independent businessman who buys at wholesale from our distributors and sells at retail to the ultimate user.

We have a great many of our programs dedicated to this retail community so that they do have video tapes, they do have printed literature and they do have access to the 1,000 trained instructors who we have trained.

Mr. Florio. These are franchise agreements for the most part; aren't they?

Mr. Isley. Yes.

Mr. Florio. Obviously it is not beyond the scope of franchise law to impose conditions on the lease or purchase of the franchise. The manufacturers certainly could make it a condition of the issuance of the franchise, that you have some of the things we have talked about.

Mr. Isley. Congressman, I don't want to over emphasize this as being an insurmountable hurdle, but over the past 10 to 15 years, the States have all adopted a great quantity of statutes that protects the individual franchisee against arbitrary imposition, the franchisee cannot be imposed upon by the franchiser. It's the franchise law.

Mr. Florio. You have really gotten into the wrong area. I have worked in this and was the sponsor of some State legislation. For the most part, those franchise protection acts are not primarily motivated by concern about imposing new conditions, they are for the most part about revoking franchises arbitrarily. I don't know anyone that would make the case that imposing safety, training requirements would be an arbitrary exercise of power by the issuer of the franchise. I'm not sure that is a productive avenue to go down.

Mr. **Isley**. That's our understanding, but you are right, it is a confusing area that I don't want to over emphasize.

Mr. **Florio**. I have other questions but let me yield to the gentleman from Utah.

Mr. **Nielson**. I have a number of questions and we may not have time for all of them. You can answer them very briefly, yes or no in most cases.

Are ATV's in the industry's opinion safe if used as intended?

Mr. **Isley**. Yes. I testified to that.

Mr. **Nielson**. What has the industry done with respect to warnings and notice and education over the years? Can you give us a quick run down on that?

Mr. **Isley**. Certainly. The industry began when we first became aware of the large number of injuries that were accruing to these products. We adopted voluntary advertising guidelines. We adopted voluntary age labeling. We have not standardized the warning labels that appear on the vehicles and in the owner's manuals. We have standardized controls and displays on the all-terrain vehicles. We have initiated a hands on training program through 1,000 instructors. We have provided every dealership with a safety training video tape and a multitude of written safety messages.

Mr. **Nielson**. Does your industry support State licensing requirements, and if so, what are you doing to get them?

Mr. **Isley**. We have a comprehensive State law that involves the safety certification of the riders themselves, that requires supervision of all children under age 14, it requires the use of helmets, it prohibits the use of alcohol, riding on roads and carrying passengers.

Mr. **Nielson**. Have you suggested this to the National Conference of State Legislators?

Mr. **Isley**. CPSC has provided a forum of State safety delegates which is working with our Association to adopt our model law. We have had our model law for 2 years and we have actually had it introduced and adopted in some States already. This coalition of State safety delegates is working with us to make it uniform among all States.

Mr. **Nielson**. It was asserted earlier that ATV related injuries are much worse than comparable recreational vehicles. Do you agree with that?

Mr. **Isley**. Our industry has not represented the snow mobile or the dirt bike interest here, and I would rely upon the information that was submitted to the record by Congressman Craig or by the CPSC staff in that area.

Mr. **Nielson**. I had a letter from the Department of Interior which I asked be included in the record earlier, Tom Leonard, Government Relations, Suzuki Motor Company, Limited, and that letter indicates what has been done by the BLM and other agencies using your vehicles. It praises you considerably and it indicates how valuable it is to agencies who have to deal with land problems.

Do you have anything you would like to add to what is in this letter?

Mr. **Isley**. There was an informal survey done among ATV dealers about 1 year ago that revealed some 200 Government Agencies, Federal, State and local, that use ATV's in the course of their law enforcement or search and rescue or beach patrol, border patrol activities. We do feel there are thousands and thousands of machines in use by the Federal and State Governments themselves.

Mr. **Nielson**. What is the safety record of child sized ATV's?

Mr. **Isley**. To my knowledge, the 50 and 60 cc child sized machines have only generated 2 or 3 or 4 injuries in the CPSC records over the 1½ years that they studied injuries.

Mr. **Nielson**. I take it you disagree with a ban on that type?

Mr. **Isley**. I think a ban could well lead to more children being carried as passengers or being allowed to ride the adult sized ATV's and therefore, I do not agree with removing the small child sized ATV's from availability.

Mr. **Nielson**. One final question. Does the industry take any exception to the findings of the Task Force report, and if so, what are the exceptions?

Mr. **Isley**. The Task Force report itself had a general condition attached to it, which said that the findings of the Task Force are not necessarily supported by the findings of their study and that additional research may be necessary to support some of the findings of the Task Force.

Mr. **Nielson**. Would you submit a complete analysis of their Task Force report and your response for the record?

Mr. **Isley**. I certainly will.

Mr. **Nielson**. How difficult is it really to operate an ATV safely? We have an expert member of this committee who has already ridden them and one could presume if he could do it, others can as well. How difficult really is it, with all due respect?

Mr. **Isley**. I may have to defer to Mr. Eckart in experience because I may not have the experience he does. I have ridden them myself. Our instructors train a great number of people on them every year. The riding of an ATV is unique but not necessarily difficult. In fact, maybe not even that unique. I have a sketch made up here comparing it to two other similar activities in terms of body position and riding technique.

As we have illustrated here, for anyone who has skied down hill, you lean your body inside toward the turn and put your weight on the outside leg. For anyone who has gone around the corner on a roller skate, you lean toward the inside and put your weight on the outside leg. That's exactly the same maneuverability positioning you do on an ATV.

Mr. **Nielson**. In your opinion, the average person could learn how to drive it safely?

Mr. **Isley**. I believe so; yes, sir.

Mr. **Nielson**. There are some of us who could make mistakes no matter how easy it is.

Mr. **Isley**. Mr. Nielson, I would offer to come to your State and let you try it for yourself. I believe you could be an excellent ATV rider.

Mr. **Nielson**. As the only skier to hit the only tree on a hill. [Laughter.]

Mr. **Isley**. I withdraw my offer.

Mr. **Nielson**. Thank you, Mr. Chairman.

Mr. **Florio**. Let me just ask one or two last questions. Is it my understanding that you in your comments a few minutes ago as well as industry's standard proposal, it does not in any way advocate limitations on marketing to children as low in age as 6 years old?

Mr. **Isley**. We do recommend limitations. We have these labeled on the vehicles themselves. We believe the 6- to 12-year-old rider should be limited to only the smallest 50 and 60 cc sized machine.

Mr. **Florio**. 6-year-old?

Mr. **Isley**. The literature on child development, and we can look at either CPSC data or data developed by independent experts that we have consulted, show that beginning at about age 6, children progressively develop the skills necessary for operating motor vehicles. One point of view is that until age 12, typically, and the word "typically," these skills are not all present. In some children, they are.

Our position is that on the smallest vehicle only, where there is not a great degree of injury, that this should be a decision left to the parents of that child, given the guidance that we ourselves give them in our literature.

Mr. **Florio**. What is the maximum speed?

Mr. **Isley**. These vehicles are delivered from the factory, pre-set to an 8-mile-an-hour maximum speed. They do have an adjustable speed limiter that will allow the parent using tools to increase this gradually at the child's development to approximately 12.5 miles an hour.

Mr. **Florio**. Let me ask a question with regard to the process that is currently being pursued by the Commission and their recommendations or their requesting the Justice Department's intervention.

What communications have you, the industry, had with the Justice Department? Have you been having meetings? It was testified to by the Commission that they were aware of meetings but did not take part in meetings.

Mr. **Isley**. You may have to separate, I think, our association of manufacturers from the manufacturers themselves. Our Association has not been named either by the CPSC or by the Justice Department as a participant in that process so we have not participated in any meetings or received any correspondence about it.

Mr. **Florio**. Have you submitted any documentation on behalf of the industry?

Mr. **Isley**. No; we have not. I mean SVIA, the trade association.

Mr. **Florio**. Are you aware of meetings that have taken place?

Mr. **Isley**. I'm only personally aware of one meeting at which one Justice Department person was in attendance, and that was a meeting of the voluntary standards committee, which is open to the public, by the way, on April 21 in Costa Mesa, CA, an individual identifying himself as a Department of Justice employee sat in on the meeting, said he was there to observe and did not participate in the meeting.

Mr. **Florio**. Were you a participant?

Mr. **Isley**. Yes. It's the SVIA committee that meets regularly on voluntary standards.

Mr. Florio. We are going to formulate some requests for information in written form and we will submit them to you. We would appreciate your compliance with our request.

Mr. Isley. Certainly.

Mr. Nielson. Will the gentleman yield?

Mr. Florio. Certainly.

Mr. Nielson. The process that the CPSC recommended is very long and drawn out; isn't it?

Mr. Isley. Yes. We have had over 70 meetings and mailings to achieve consensus among the over 40 people that are involved in this process.

Mr. Nielson. Is part of the reason why they accuse you of dragging your feet because they imposed upon you a process that is impossible?

Mr. Isley. I think it is unjust to characterize our participation as dragging our feet. We proceeded as expeditiously as possible under the system set out for public participation.

Mr. Florio. My recollection of the criticism was not so much dragging feet as the product, and I think they used the words "wholly inadequate." I think they are talking about the substance, that is the Consumer Product Safety Commission is talking about the substance of what it is that is being advocated as being inadequate.

Mr. Isley. That's possible. However, the industry has not waited in Phase I to deal with controls, displays, labeling, and warnings. We have not waited for the process to see itself through. We have adopted the substance of Phase I standards.

Mr. Florio. You appreciate the significance of the difference between your going ahead voluntarily and doing things that you may regard as adequate and the significance of a voluntary standard being formulated and agreed to and accepted in lieu of mandatory requirements? In a sense, the industry is legitimately seeking to take advantage of the provisions that are in the law, saying other things being equal, voluntary standards if approved by the Agency will satisfy the requirement for safety under the law.

It's not a matter of your just saying we are voluntarily doing something out here that we think is good. There is a fairly standardized process that allows the industry to take advantage of the voluntary standard as opposed to a process that would result in a mandatory standard being imposed by the Government.

Mr. Isley. I agree. Congressman, we are doing both. We have voluntarily adopted the standards as we proposed them so that we wouldn't be—what was the word—in gridlock. We are doing something about it while we are still participating in the formal voluntary standards process and we will abide by that when the process is complete.

Mr. Florio. Progress that is being made by the industry in Phase II, on the Phase II aspect of the voluntary standards, are there specific proposals, design modifications that are being contemplated that can address people's concern about the inherent instability of some of these machines?

Mr. Isley. We began early in 1985 looking at the dynamic stability as well as turning, stopping and other specific tests. There is not an existing body of dynamic stability testing. We have to start everything from designing the surface that you run on to the test rider's weight or even if there should be a test rider. We have begun by employing the best experts we could find to consult with us and propose testing procedures. That proceeded all during last year. Based upon their recommendations, we sent out a first draft of the Phase II standards to the entire peer group review in November.

At that time, the Commission authorized their staff to take a different approach, to participate in the standards making process for Phase II.

Mr. Florio. For the Commission to participate?

Mr. Isley. That's correct. At the April 21 meeting, we reached agreement with that Commission to form an engineering working group so that process could proceed a lot faster than Phase I. In Phase I, their participation was to monitor and to criticize only, but not to give us things to work with, not to participate in the standard's making itself. That took a long time. There were many delays in Phase I. I think we can benefit from that and speed Phase II up as quickly as possible.

Mr. Florio. The gentleman from Ohio.

Mr. Eckart. What would you characterize as the adult sized?

Mr. Isley. Right now, the 50 and 60 cc sized machines are recommended for 6 to 12. There is a 70 and 80 size, youth model, or kids under 14—I'm sorry 12 and older and then adult size would begin at 90 cc and above.

Mr. Eckart. It would be 90 plus. I guess we can get up to well over 250?

Mr. Isley. There are some work vehicles and so forth now that go up to 499 cc.

Mr. Eckart. You wouldn't race one of those.

One of the concerns I had is that Mr. Florio's staff and my staff went to a local ATV dealer to inquire about purchasing one of these for an 11-year-old. They were directed to look at the 125 cc model and up. Clearly, based on what your representation would be, that would be a lot bigger than anything you would recommend for an 11-year-old.

How do you deal with marketing practices such as this?

Mr. Isley. Our manufacturers are strongly committed to communicating the importance of this to their dealerships and as is becoming evident, past the dealerships themselves directly to the salesmen on the floor. Whenever there is an incidence of inappropriate sales behavior on the part of the salesman, we have to get that dealer on a remedial action of some kind.

This is a priority concern of ours at this time.

Mr. Eckart. Now our two staff people were told—and I'm going to quote the salesman directly—that if their son practiced regularly, he would, even at age 11, soon outgrow the 125 cc. engine quickly, and that they could accommodate him with a larger engine.

Mr. Isley. We do not support that point of view. I cannot support a salesman that would say that to a customer. It's not the industry's recommendation, nor do I believe it to be that dealership's recommendation.

Mr. **Eckart**. So tell me, how are you trying to protect unsuspecting consumers from these types of marketing practices? How are you dealing with this specific problem?

Mr. **Isley**. By putting labels on the machine, by putting handtags on the handlebars of the machines, by putting this information into every owner's manual, by putting videotapes at every dealership, by offering 800-number, toll-free service direct to the consumer, and most of all I think by bringing pressure on all dealers and all salesmen to sell responsibly.

Mr. **Eckart**. OK. So you see, obviously, the conflict that it places on a parent who has never ridden one of these things, they see a little red, yellow, whatever the tags are hanging there, and the salesman responds, "Oh, no. That's not relevant. What you're reading is not relevant. This is not too big for your son, and, in fact, he could outgrow this very quickly."

Mr. **Isley**. We cannot condone that kind of sales attitude on the part of salesmen, and we will redouble our efforts to make sure that that does not continue.

Mr. **Eckart**. I thank the Chairman.

Mr. **Florio**. Just lastly, what happened to the Honda dealer that was made reference to on the "60 Minutes" program; do you know?

Mr. **Isley**. There were several programs. What Honda dealer?

Mr. **Florio**. This is the "60 Minutes" instance where the franchise dealer went out there and clearly made misrepresentations. You were asked the question then, "What do you know as to what happened?" You didn't have an answer, whatever it was, 1 month ago or 2 weeks ago. I assume that you've had intellectual curiosity enough to go find out.

Mr. **Isley**. Oh. Immediately—as a matter of fact, when I finished my interview with Mr. Bradley, I found out who the Honda dealer in Yuma was. I talked to him. His name is Louis Hearth. That salesman was acting without the permission or direction of the dealership that employed him. He has since been dismissed. In fact, he was dismissed from his sales job well before the "60 Minutes" show even was broadcast.

Also I should mention, in that instance, that salesman was not the last point of contact that that customer would have had in buying an ATV from Yuma Honda. That buyer would have had to go to a sales manager and, in fact, would have had to sign the delivery receipt for the vehicle that straightened out any misinformation that was given to him about the appropriate size of the machine, the safety information, and so forth. There is a two-level sales process, the salesman on the floor and the sales manager.

Mr. **Florio**. The sales manager just gives someone something to sign to consummate the deal.

Mr. **Isley**. Not necessarily. And actually I would prefer that you ask this perhaps of one of the dealer representatives here, what their precise process is. But I was assured by Louis Hearth that that was totally inappropriate, what happened on television. He does not employ that person anymore, nor does he condone that type of sales activity.

Mr. **Florio**. Thank you very much. We appreciate your participation.

Our last panel is made up of Mr. Roy Janson, president of the American All-Terrain Vehicle Association, and Mr. Steve Sanders, of Sanders Honda, Springfield, TN.

I am informed that we have to vacate the room by about 2 p.m., which would still provide us with opportunity to hear from our witnesses and present questions, but we would appreciate if our witnesses would proceed in a summary fashion. Their statements, in their entirety, will be put into the record.

Thank you very much. And, Mr. Janson, we'd be happy to hear from you.

STATEMENTS OF ROY JANSON, PRESIDENT, AMERICAN ALL-TERRAIN VEHICLE ASSOCIATION; AND STEVE SANDERS, SANDERS HONDA, SPRINGFIELD, TN.

Mr. **Janson**. Well, thank you for the opportunity to speak, and I will try to summarize as best I can.

My name is Roy Janson. I represent the American All-Terrain Vehicle Association. This Association of which I am president is the largest user organization of ATV owners in the country. It is a subsidiary of the American Motorcyclists Association. We represent some 14,000 members who enjoy ATV recreation for a variety of purposes. They are involved in competition. They use them for recreational purposes, access to public lands, hunting, fishing. They use them on the farms.

Mr. **Florio**. These are users?

Mr. **Janson**. Yes. We are a user organization. We are funded through membership fees, and we are a subsidiary of a larger organization, the 140,000-member American Motorcyclists Association.

When our Association was created as a subsidiary of the AMA in 1983, it was done so specifically to sanction ATV competition events and to work to promote responsible use and to develop recreational opportunities for ATV riders throughout the country. Since 1983, we have sanctioned more than 3,500 ATV competition events in all parts of the country. These events have attracted more than 84,000 participants in all types of competition. Some of these are speed contests, actual races; some are cross-country type events. Some are very casual, trail ride type events. Some are field meets.

During this period, we have experienced out of this 84,000 participants 123 injuries that required hospital treatment and no fatalities. Our records indicate one injury per 690 competitive uses, and we document our injury statistics through our referee reports, which are required to comply with our insurance requirements.

These figures of injuries suggest a much lower rate than that identified by CPSC, and in our view, clearly indicate that ATV's, even when used in speed contests by sportsmen competitors, do not present unreasonable risks. And this is an important concept, because these are individuals who are using these products to the limits and clearly demonstrate that this product is not defective, and that's a point that needs to be made here, because we're talking about recalls and a variety of activities that imply that there's something wrong with this vehicle.

We don't hear anyone up here yelling that the handlebars fall off or the wheels come off or whatever. We would make the point that what we have heard here, that there is simply no mechanical fix for a social problem.

It should be emphasized, however, that our experience is derived from an activity that is governed by a rule book, and we require safety equipment for all of our participants. Our Association strongly endorses an increase in programs designed to promote user education and awareness, and, in fact, many of our members are certified as instructors in the SVIA's national program.

ATV use, along with other forms of motorized recreation, whether it be snowmobiling or off-road motorcycling, requires an understanding of the responsibilities associated with it, and that's very simple. When these responsibilities are ignored, it is obvious that with any type of motorized vehicle, injuries can occur. While the failure to wear appropriate safety equipment is not a cause of accidents, it surely can help to reduce the severity of injuries that are associated with motorized recreation, and it needs to be pointed out—motorized recreation, whatever type it is, is a risk recreation.

It is our position that individuals who purchase ATV's, as well as snowmobiles and off-road motorcycles, recognize the dangers associated with this activity, and that problems result primarily from how vehicles are used rather than from vehicle design. These vehicles are not toys, and they are not sold in toy stores. When a parent goes to purchase one of these vehicles for their child, they do so at a franchised motor vehicle dealer.

This position we have identified is supported by information collected from CPSC which clearly identifies an unfortunate pattern of misuse by operators who have been injured while using these vehicles. CPSC has reported that more than half of injured riders wore no safety equipment whatsoever, that 90 percent of injured riders failed to wear the prescribed safety equipment. They have also reported that a third of all fatalities are alcohol-related, and that in the case of young operators, there is a clearly identified problem related to inadequate supervision marked by an unfortunate pattern of young riders being injured while riding with passengers and on roads.

We heard testimony this morning about circumstances that resulted from a child being allowed to operate an ATV without supervision.

What is most disturbing is that all of these practices—riding on roads, riding double—are all activities that are addressed in the owner's manuals and on labels attached to the vehicles themselves.

The American ATV Association shares the concern of the subcommittee regarding the number of injuries that are associated; however, we feel that our experience in coordinating ATV events and recreational programs clearly demonstrates that when these vehicles are used as intended, that they present no unreasonable risk to the operator.

In December, the CPSC outlined a proposal to restrict ATV use to adult operators only, which is a policy that our Association opposes. It must be recognized the the diversity in ATV models is intended to allow adults of all sizes, as well as young operators, to choose a vehicle that suits their specific needs. Limitation of ATV's to a single size would prevent this option and, in fact, could lead to an increased number of injuries.

We base our opposition to a ban on youth model ATV's on information provided by the CPSC, which reported that these riders on youth model vehicles were not demonstrated to be a high-risk group. What the agency confirmed and what you have heard today is that the problem in large numbers are youth riders using full-size ATV's. A ban on models for young riders is unwarranted and removes the opportunity for adults to choose appropriate vehicles for their children.

As mentioned, our Association shares the concern of this subcommittee and CPSC concerning these injuries. We strongly support efforts to increase the awareness of ATV owners as to the responsibilities associated with motorized recreation through the distribution of readily available, easy to understand information materials. We support the development of education programs to be made available to purchasers who desire additional education, and we support the development of appropriate ATV design standards which can be shown to reduce ATV injuries, providing that those voluntary standards do not negate the ATV performance characteristics that our members find most attractive.

In conclusion, let me mention that the positions that I have just stated go far beyond just our membership and represent the positions of the 98 percent of users who do not get injured by using their ATV's. There are a number of groups who will not have the opportunity to address this subject and will not have the opportunity to provide additional testimony, yet who represent ATV enthusiasts from all parts of the country, who share our concern regarding the possible CPSC and Justice Department initiatives that may impact their opportunity to enjoy ATV recreation.

We urge you not to forget us.

[The prepared statement of Mr. Janson follows:]

TESTIMONY OF THE AMERICAN ALL-TERRAIN VEHICLE ASSOCIATION

I am here to represent the American All-Terrain Vehicle Association. This association, of which I serve as president, is the largest organization of ATV users in the United States.

As a subsidiary of the American Motorcyclist Association, we represent more than 14,000 members who enjoy ATV recreation. Our members are involved in ATV competition and use ATV's for other recreational purposes, including access for hunting and fishing.

As you are aware, ATV's are not inexpensive! This cost of an ATV does not differ greatly from that of an off-road motorcycle or a snowmobile. The purpose of an ATV is not a casual transaction! When an adult purchases a new ATV, they do so from a frachised dealer, ATV's are not sold in toy stores!

ATV's are motorized recreational vehicles whose use requires certain responsibilities. In the case of ATV's designed exclusively for children, they require the supervision of an adult. And it must be recognized that this responsibility for supervision is absolute. Not some of the time, but, rather, all of the time.

The American ATV Association was established as a subsidiary of the 140,000 member American Motorcyclist Association, specifically to sanction ATV competition events and to work to promote responsible use and the development of recreational opportunities for ATV riders. Since 1983 we have sanctioned more than 3,500 ATV competition events in all parts of the country. These events attracted more than 84,000 entries of all types of competition. During this period we have experienced 123 hospitalizing injuries and no fatalities. Our records indicate one injury per 690 competitive uses. The figures suggest a much lower rate of injury than that identified by CPSC, and they clearly indicate that ATV's, even when used in speed contests by sportsmen competitors, do not present unreasonable risks.

It should be emphasized that our experience addresses supervised ATV use under conditions governed by a rule book that requires the use of personal safety equipment.

Many alternatives for addressing this issue have been discussed, including user education and information, age restrictions, established product speed limits, and cautionary labeling. The American ATV association has strongly endorsed an increase in programs designed to promote user education and awareness.

ATV use, along with other forms of motorized recreation (snowmobiling and off-road motorcycling), requires an understanding of the responsibilities associated with that use. When these responsibilities are ignored it is obvious that, as with the use of any type motorized vehicle, injuries can occur. And while the failure to wear appropriate safety equipment may rarely be the cause of an accident resulting in injury, the use of such equipment clearly can reduce injuries associated with motorized recreation.

It is our position that individuals who purchase ATV's, as well as snowmobiles and off-road motorcycles, recognize the dangers associated with motorized recreation, and that problems result primarily from how a vehicle is used rather than from its design. This position is supported by information collected from CPSC which clearly identifies an unfortunate pattern of mis-use by operators of these vehicles. CPSC has reported that more than half of all injured riders wore no safety equipment at all, while as much as 90 percent of those injured failed to use all of the recommended safety apparal.

Furthermore, the CPSC has reported that more than a third of all injuries are alcohol related, and that in the case of young operators there is a clearly identified problem related to inadequate supervision marked by an unfortunate pattern of youth riders being injured while riding with passengers or on roads and highways.

What is most disturbing is that these are practices which are all addressed in the vehicle's owners manuals and on product labeling on the vehicles.

The American All-Terrain Vehicle Association shares the concern of the subcommittee and CPSC regarding the number of injuries that are associated with ATV use. However, we feel that our experience in coordinating ATV events and recreational programs clearly demonstrates that when ATV's are used as intended, they present no unreasonable risk to operators.

In December the CPSC outlined a proposal to restrict ATV use to adult operators only, which is a policy our association opposes. It must be recognized that the diversity in ATV models is intended to allow adults of all sizes as well as young operators to choose a vehicle that suits their needs. The limitation of ATV's to a single size would prevent this option, and in fact could lead to an increased number of injuries. We base our opposition to a ban on youth model ATV's on information provided by the CPSC which reported that youth riders on youth model ATV's were not demonstrated to be a high risk group. What the Agency confirmed, however, was a finding that the high risk group was instead young riders on full size or adult model ATV's. A ban for young riders is unwarranted and removes the opportunity for adults to choose appropriate vehicles for their children.

It must be recognized that an ATV, as with any motorized vehicle, requires specialized skills that must be developed to allow for safe operation of that vehicle. It must also be recognized that while the necessary skill level required for competent ATV use is no greater than that required for other forms of motorized recreational vehicle use. The techniques related to ATV operation are specialized and specific to all-terrain vehicles. As a means to promote opportunity for learning these skills our association has expressed its support for a national training program, and in fact many of our members are certified as instructors for this effort.

As mentioned, the American ATV Association shares the concern of the CPSC and Congress regarding ATV-related injuries. We strongly support efforts to increase the awareness of ATV owners as to the responsibilities associated with motorized recreation through the distribution of readily available, easy-to-understand informational materials. We strongly support the development of education programs to be made available to ATV purchasers who desire additional instructions on safe ATV operation.

We support the development of appropriate voluntary ATV design standards which can be shown to reduce ATV injuries, providing that those standards do not negate the ATV performance characteristics, which purchasers find most attractive.

Mr. Florio. Thank you very much.

Mr. Sanders.

STATEMENT OF STEVE SANDERS

Mr. **Sanders**. Thank you, Mr. Chairman.

First I'd like to thank you for allowing me the opportunity to testify here today. I only found out about this meeting last week, and I certainly appreciate it.

I have been a Honda motorcycle and ATV dealer in Springfield, TN, since April 1981. To date, our dealership has sold over 2,500 ATV's. This figure represents approximately one ATV for every 16 people in our county. Our annual sales are approximately $1.6 million per year, and we employ 10 people. At the present time, Sanders Honda is in the top 3 percent by sales volume of all Honda dealers in the country.

Recent media coverage has portrayed our dealer network as a bunch of money-hungry, sell at all costs, uncaring people. This is simply not true. We are privately owned, small businesses that are integral parts of our individual communities. I have a college education. I'm married; I have a 9-year-old son. I'm very active in civic projects. I'm the vice president of our local fair board. Our company donates time, money, and human resources to charity organizations, and we sponsor athletic programs for youth in our communities. We are not animals, as the news media and ex-Commissioner Stewart Statler would portray us.

In the spring of 1985, Sanders Honda became active—very active in ATV safety issues. ABC's "20/20"aired a very biased attack on the ATV industry. That show, the misstatements and, in my opinion, the illegal actions at that time of Stewart Statler prompted me to get very active in ATV safety. It also outraged me.

I immediately went to work. It became apparent that the CPSC was to be a directing force to our industry. In June 1985, Sanders Honda, in cooperation with the SVIA, became the first dealership in the State of Tennessee to have four active ATV rider training instructors. During that same year, I attended all of the CPSC hearings except one and attended the house subcommittee hearing here in Washington.

The unfortunate aspect of our training aspect is that it has not worked for Springfield, TN. Parents will not take the time required to train their children. To date, we have spent approximately $3,500 on our training course. The 78 people that we trained cost us approximately $45 per person. We promote this course; we offer it free of charge during many of our sales promotions. We ran newspaper ads, advertised on television, and promoted the course in the store. With such a high cost per person, I had to take a long, hard look at our training program to justify its existence.

In the fall of 1986, Sanders Honda's ATV safety program changed direction. It was evident that hands-on training would not work in our agricultural community. We decided not only to promote ATV safety in the store, but to get actively involved in ATV safety seminars. We started going to the public schools to give 30- to 45-minute audiovisual programs on ATV safety. We also participated in local health fairs, auto shows, outdoor shows, and boat shows. This phase of our new program has been very successful.

In September 1986, Jesse Holman Jones Hospital and Sanders Honda cosponsored the first public seminar on ATV safety in middle Tennessee. Our panel consisted of three medical doctors, a representative of SVIA, and myself. The seminar was very positive, and the attitude was good, and everyone that attended the meeting left with new knowledge of ATV safety.

Our last safety program was May 2, 1987. Again, it was cosponsored by the hospital and our dealership. That day, our orthopedic surgeon informed me that he had not treated or admitted into the hospital in over 1 year any all-terrain vehicle accident victim. He also expressed an opinion that he was seeing a lot more soccer and horseback riding accidents, and he could not understand why.

I would like to briefly discuss the proposed ban on three-wheeled ATV's. The primary focus has, of course, been on children. In every survey that I have seen, the majority of child victims have either been riding double, riding on paved roads, riding adult-size models, riding without safety equipment, and as many as 70 percent have had no parental supervision whatsoever.

However, none of the present or former CPSC Commissioners, the medical experts, or any ATV proponents have addressed this problem. This does not seem to justify the recall or ban on ATV's. If parents are going to buy these units, they must accept their parental responsibilities. If they do not, the odds of their child being injured, whether on a bicycle or skateboard or on an ATV will go up tremendously.

As for the children that have been injured, I do have compassion and sympathy for their families, but I also have that same compassion for the over 500,000 people that are hurt annually riding bicycles. These parents cannot transfer their guilt to any other person. Parental responsibility falls squarely on their shoulders.

In closing, I would like to state that 2 years ago, I was convinced that ATV rider training was the only way to lower our injury rate. But with the failure of our training program and the enormous success of our education program, I am confident that I was wrong. Educating the public is the key to lowering the ATV injury rate.

Sanders Honda's education program will get bigger and better. We supported ATV safety legislation in our General Assembly this year. But people outside our industry defeated that bill. How many more people must be hurt before someone at CPSC or in the Congress or in the State legislature comes forth and admits the truth: ATV's are not dangerous, but sometimes people that use them can be.

I look forward to that day when we can look to Government officials to give us good, honest help and not political rhetoric.

Again, I appreciate the opportunity to testify.

Mr. **Florio**. Let me thank both of the gentlemen.

The only clarification I wanted, did I understand you to say that the training systems that you've talked about haven't worked?

Mr. **Sanders**. No, sir.

Mr. **Florio**. But I thought I understood you at the end to say that education was required.

Mr. **Sanders**. Right.

Mr. **Florio**. Can you just very briefly, if you don't mind, make the distinction between your training program and the education program you're advocating?

Mr. **Sanders.** OK. Yes, sir. The SVIA training program requires that we train, especially a child, a 4½ to 6-hour course. One parent must be available and be there the whole duration of the course.

We cannot get parents to come to that course.

Mr. **Florio.** What kind of education program are you advocating in lieu of that?

Mr. **Sanders.** The education program is the seminars that we put on. We run the tapes. We preach ATV safety all over our county. And I think you can see—my statements are verifiable at the hospital—we do not have the injury rate that you see in other parts of the country.

We've been working on it real hard. It hasn't come overnight.

Mr. **Florio.** Thank you very much.

Are there questions? The gentleman from Utah.

Mr. **Nielson.** No questions, except I would like to put the letter from Mr. Sanders to Mr. Ed Glynn, the assistant vice president of the Motorcycle Sales Division, into the record. It explains in a little more detail the training program that you have in your program.

Mr. **Florio.** Without objection, that will be put into the record.

[The letter referred to follows:]

SANDERS HONDA

May 5, 1987

Mr. Ed Glynn
Assistant Vice President
Motorcycle Sales Division
American Honda Motor Company
100 W. Alondra Blvd
Gardena, California 90247

Dear Ed,

As you are aware, Sanders Honda has been very active in the ATV Safety issue. In June of 1985 I contacted the SVIA about becoming an ATV rider training instructor. In July of 1985 four employees of Sanders Honda became certified SVIA rider training instructors. We were very excited about the possibility of training our customers.

Shortly after my training, I placed two ads in our local newspapers to get our program started. To my disappointment, not one person responded People at the store thought it was a good idea, hut not for them.

We were successful in a Boy Scout training program. In one weekend 6 SVIA instructors trained 56 Boy Scouts. Christmas of 1985 resulted in 12 more youngsters being trained, and Christmas of 1986 did not produceone single trained person. My only other training session was with a group of dealers.

As you can tell, I have been very disappointed with the success of this program. To date I have spent approximately $3,500 on our training program. This averages about $45.00 per person trained. The sad part about the situation, is that we had people sign up for the course and then not show up. It made me wonder if the whole program was worth continuing.

After a long look at where we were, where we had been, and where we were going, I decided that it all was worth the effort, time and money. Let me give you a quick overview of what happened.

It was apparent that hands on training was not the best approach in a rural agricultural county like Robertson County, Tennessee. I cannot drive a 4 wheel drive tractor with any confidence at all. Howcould I expect a 12-14 year old, who could operate that same tractor proficiently, to let me train him on an ATV? I decided to take a different approach.

In the fall of 1986, the education director of the local hospital and I decided to conduct an ATV seminar. This would give people in our community a wide range of ideas on ATV Safety. Our panel consisted of an orthopedic surgeon, a neurosurgeon, a trauma center doctor, a representative of the SVIA, and myself. The atmosphere was very positive and the 125 people that attended were exposed to an enormous amount of information on ATV SAFETy. The best thing that could have ever happened to me in regards to ATV Safety happened at that seminar. Dr. Walter Wheelhouse, our local orthopedic surgeon, and I agreed that education was the single most important thing we could do to promote ATV SAFETY. Dr. Wheelhouse displayed material at his office, and has actively participated in ATV SAFETY seminars since then. With his help, the local hospital, and teachers in the school system, ATV SAFETY is a vital part of Robertson County.

Our last seminar was May 2, 1987 at a local middle school. Our class lasted about 2 hours and consisted of an ATV training film, familiarization of an ATV and classroom discussion of the do's and don'ts of riding ATV's. Dr. Wheelhouse informed me that he had not seen a serious injury or admitted a patient to the hospital for an ATV accident in the last year. His main concern right now is the number of soccer and horseback riding injuries he is seeing.

As you know, I do not give up very easily. Our new approach to ATV SAFETY is a much better one. Two years ago, I was convinced that hands on training was the only way to lower our accident rate. I know now that I was wrong. People simply will not take the time to let us train their kids. They don't mind at all if we educate them at school, or teach them at seminars.

In closing, I'd like to make three key points about my new approach to ATV SAFETY. One is that education reaches many more people than hands on training. We not only teach people with ATV's, but reach those who may be potential users. Now the kid next door knows not to get on the back of his friends ATV. The second key is that we can educate many different places, not just at the training site. I don't have to advertise to educate, I can do it anywhere. And last, education works better and has a lower cost per person. I can spend less and get more for my money. We'll still do hands on training, but not a person comes into my store that does not get a little ATV education. I look forward to seeing you. If you need me, please call. And please excuse this poor typing. My secretary was sick today, and I did it myself!

Sincerely

Steve Sanders

Steve Sanders
Sanders Honda
Highway 41 South
Springfield, Tennessee 37172

cc Mike Brown

Mr. **Nielson**. I would like to commend him for the program he's started, and as I understand it, the chairman asked, what's the difference between the training and the education. The training, by that you mean the hands-on time?

Mr. **Sanders**. Yes, sir.

Mr. **Nielson**. That, by itself, is not sufficient, in your view.

Mr. **Sanders**. No, sir, it is not, because you're talking about a community where 12- and 14-year-old kids can drive four-wheel-drive tractors. And we're telling them that they can't drive a 125 or 70 cc. ATV. They're not willing to come out and let me train them for 6 hours, but yet I can go to school, where they're already there. They have supervision of the school teachers. And we can put on a good 45-minute seminar and do a much better job. We do it all over our county.

Mr. **Nielson**. Thank you, Mr. Chairman.

Mr. **Florio**. Gentlemen, thank you very much. We appreciate your help today.

If there is no further business to come before the committee, the committee stands adjourned.

[Whereupon, at 1:50 p.m., the hearing was adjourned.]

[The following materials were submitted for the record:]

DENNIS E. ECKART
11th DISTRICT, OHIO

MEMBER
COMMITTEE ON
ENERGY & COMMERCE

COMMITTEE ON
SMALL BUSINESS

CHAIRMAN
SUBCOMMITTEE ON
ANTITRUST, DEREGULATION &
PRIVATIZATION

DEPUTY WHIP

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

WASHINGTON OFFICE
1210 LONGWORTH BUILDING
WASHINGTON, D.C. 20515-3511
(202) 225-6331

DISTRICT OFFICE
5970 HEISLEY RD. #220
MENTOR, OHIO 44060-1872
(216) 522-2056

TOLL FREE
1-800-457-7375

May 27, 1987

Mr. Lyndon Yurikusa
President
Kawasaki Motor Corporation, U.S.A.
9950 Geronimo Road
Irvine, California 92718-2016

Dear Mr. Yurikusa:

On May 12, 1987, the Subcommittee on Commerce, Consumer Protection and Competitiveness of the Energy and Commerce Committee, of which I am a Member, conducted a hearing on the safety of all-terrain vehicles (ATVs). The hearing examined Federal government and industry efforts to protect consumers from potential dangers associated with ATVs.

During the hearing, I expressed concern about the marketing practices of ATV dealers and sales representatives in selling ATVs to children under sixteen. I am particularly disturbed about indications that dealers may be encouraging the purchase of adult-sized ATVs for children, despite the Consumer Product Safety Commission's finding that children under sixteen are at greater risk of injury and death than adults when operating adult-sized ATVs.

Mr. Alan R. Isley, President of the Specialty Vehicle Institute of America, assured me that the ATV manufacturers were "strongly committed" to communicating the importance of appropriate marketing practices to dealerships. Mr. Isley stated that incidences of inappropriate sales behavior result in remedial action by manufacturers against the culpable dealerships. Moreover, Mr. Isley pledged to "redouble" industry efforts to eliminate inappropriate sales behavior.

In order to develop further information on industry efforts in this vital area, I am requesting that your company provide me with the following additional information, which I have requested Subcommittee Chairman James Florio to include in the published hearing record:

(1) copies of written communications and/or instructions from your company to dealers and sales representatives regarding the marketing of ATVs to children under sixteen. This may include, but is not limited to, information provided regarding the appropriate age/ATV-size correlation, training requirements, and the use of safety equipment;

(2) copies of any written information concerning safety precautions which dealers are required to provide to consumers prior to the purchase of an ATV for children under sixteen;

(3) copies of written corporate policy(ies) with respect to the marketing of ATVs to children under sixteen;

(4) copies of written corporate policy(ies) with respect to disciplining dealerships and sales representatives who inappropriately market ATVs to children under sixteen;

(5) a listing of actions taken by your company to discipline dealerships and/or sales representatives with respect to violations of corporate policy as described in #4 above; and

(6) with respect to Mr. Isley's commitment to "redouble our efforts to make sure [inappropriate marketing] does not continue," please describe your company's current and proposed actions in this regard.

I would greatly appreciate receiving the information requested by Wednesday, June 10, 1987 in order to ensure its inclusion in the hearing record. Thank you for your cooperation in this matter.

Sincerely,

DENNIS E. ECKART
Member of Congress

cc: The Honorable James J. Florio
Chairman
Subcommittee on Commerce, Consumer Protection and Competitiveness
Committee on Energy and Commerce

LAW OFFICES OF
PAUL, HASTINGS, JANOFSKY & WALKER
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
TWELFTH FLOOR
1050 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036
TELEPHONE (202) 223-9000
CABLE ADDRESS PAULHAST WSH
TWX 710-822-9082

COUNSEL
LEE G. PAUL
ROBERT P. HASTINGS
LEONARD S. JANOFSKY
CHARLES M. WALKER

LOS ANGELES OFFICE
TWENTY-SECOND FLOOR
555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 489-4000

ORANGE COUNTY OFFICE
SEVENTEENTH FLOOR
695 TOWN CENTER DRIVE
COSTA MESA, CALIFORNIA 92626
TELEPHONE (714) 641-1100

WEST LOS ANGELES OFFICE
FIFTH FLOOR
1299 OCEAN AVENUE
SANTA MONICA, CALIFORNIA 90401
TELEPHONE (213) 451-1200

ATLANTA OFFICE
FORTY-SECOND FLOOR
GEORGIA-PACIFIC CENTER
133 PEACHTREE STREET, N. E.
ATLANTA, GEORGIA 30303
TELEPHONE (404) 588-9900

CONNECTICUT OFFICE
SECOND FLOOR
THREE LANDMARK SQUARE
STAMFORD, CONNECTICUT 06901
TELEPHONE (203) 357-0100

NEW YORK OFFICE
EIGHTH FLOOR
200 PARK AVENUE
NEW YORK, NEW YORK 10017
TELEPHONE (212) 370-1100

June 16, 1987

OUR FILE NO.

BY HAND

The Honorable Dennis E. Eckart
1210 Longworth Building
Washington, D.C. 20515

Dear Congressman Eckart:

Enclosed herewith is the response of Kawasaki Motors Corp., U.S.A. to your letter of May 27, 1987 requesting certain information regarding the marketing of all-terrain vehicles.

Kawasaki appreciates your interest and concern in this matter.

Yours very truly,

Mark L. Gerchick
for PAUL, HASTINGS, JANOFSKY & WALKER

Counsel for Kawasaki Motors Corp., U.S.A.

Enclosure

Kawasaki Motors Corp., U.S.A

MAILING ADDRESS P.O. Box 25252 Santa Ana, California 92799-5252
9950 Jeronimo Road, Irvine, California 92718-2016 • (714) 770-0400

June 16, 1987

BY HAND

The Honorable Dennis E. Eckart
1210 Longworth Building
Washington, D.C. 20515

Dear Congressman Eckart:

Kawasaki Motors Corporation, U.S.A. ("Kawasaki") is pleased to provide the following additional information in response to your letter of May 27, 1987 regarding marketing of all-terrain vehicles (ATVs) and related issues. At the outset Kawasaki wishes to make clear that it does not now, and has not in the past, offered ATV models intended for use by young children. Kawasaki offers only adult-sized ATVs and offers no model intended for persons under 14 years of age.

Since mid-1985, every Kawasaki ATV distributed has been clearly labeled for use only by persons 14 years and older. Even prior to mid-1985, Kawasaki clearly labeled all of its ATVs, including its first model introduced in 1980, to indicate that children require adult instruction and supervision to operate the vehicle. Although the CPSC reacted positively to Kawasaki's 1985 institution of the 14-year age recommendation, the Commission last September expressed the view that 16 years is the appropriate age. Kawasaki provides the following in response to your specific questions:

1. Kawasaki has communicated and is communicating in several ways with its dealers and sales personnel and potential purchasers regarding appropriate age recommendations and marketing of ATVs to children. The first Kawasaki ATV carried a label prominently stating that "children must have adult instruction and supervision to operate this vehicle." The same message is carried in the owner's manual on the first page, in red-colored print, under the heading "Important: Riding and Safety."

This language was supplemented, when age recommendations were adopted, with the following statement: "Use by children under the age of 14 is not recommended." (A copy of the age recommendation statement from a current owner's manual is attached hereto as Attachment A.) The age recommendation is further emphasized by prominent product hang-tags. These tags are provided to the dealers along with the ATV for display on the ATV itself on the dealership floor. An example of a hang-tag (provided as Attachment B) states "MINIMUM RECOMMENDED OPERATOR AGE 14." The hang-tag itself further states that it "must not be removed before sale."

Kawasaki has further made clear to dealers and sales representatives the importance of emphasizing safety. For example, at its Fall, 1985 national dealer meeting (at which many new models are introduced to the dealers), Kawasaki strongly emphasized the age recommendation. The very first "important point to be emphasized" in Kawasaki's presentation related to marketing to children, as follows:

> "Kawasaki does not make any ATVs that are intended for children under 14 years of age. This recommendation is not given lightly, rather it is an acknowledgment that use of full-size ATVs by kids who are not yet physically and/or emotionally capable of handling them is a significant accident factor."

(A copy of the Fall 1985 national dealer meeting message is attached as Attachment C hereto.)

2. As indicated above, clear and prominent hang-tags are provided to the dealers for display with each ATV. These hang-tags make clear that the machine is not recommended for anyone under 14 years of age. In addition, the same message is forcefully communicated in red type on the first page of the manuals provided to purchasers and the vehicles are also labeled as not recommended for anyone under 14. (A copy of the owner's manual for each Kawasaki ATV is also attached.)

3. Kawasaki's policy with respect to marketing of ATVs to children has been emphasized. As recently as May 1 of

this year, Kawasaki re-emphasized the need for dealers to follow particular guidelines, including the following:

> "Follow the age recommendations contained on vehicle labels and hang-tags.
>
> Kawasaki ATVs are not intended for use by children under 14 years old.
>
> Make sure that buyers are aware of this, for their own children (if applicable) or any others who might consider operating the ATV."

The letter further urged dealers to "make your store a one-stop ATV safety center" and to help "ensure that injury statistics associated with ATV use, which actually declined in 1985 and 1986, continue their current downward trend."

4. While Kawasaki maintains no specific written "corporate policies" so denominated with respect to "disciplining" dealers, Kawasaki's Dealer Sales and Service Agreement prohibits improper sales practices and specifies that if a dealer is in default with respect to any provision of the agreement, then Kawasaki "may suspend all pending orders and shipments" until the default is cured. In addition, the Agreement provides that Kawasaki can terminate the Agreement in the event of "failure by dealer to conduct his business in compliance" with its provisions. State law may, however, limit the exercise of Kawasaki's rights under these provisions.

5. To date, Kawasaki is not aware of specific instances in which its dealers have engaged in improper marketing practices relating to marketing of Kawasaki ATVs to children below the recommended age limits and who would therefore potentially be subject to "discipline".

6. With respect to the future, Kawasaki remains committed to ensuring that inappropriate marketing does not occur. To this end, in conjunction with renewal of its sales and service agreement with dealers at the end of this year,

Kawasaki is reviewing the terms of the agreement to ascertain areas of potential improvement and strengthening, specifically with respect to the issue of marketing of ATVs to appropriate age persons. In addition, Kawasaki expects further to notify dealers of the importance of appropriate marketing through mailings to dealers and through special programs to be organized during its Fall national dealers meeting and its regional meetings of Kawasaki dealers.

Kawasaki appreciates the opportunity to respond to your request for information and appreciates your interest in this subject.

Respectfully submitted,

KAWASAKI MOTORS CORP., U.S.A.

By: Roger F. Hagie
Roger F. Hagie
Government Relations Manager

Attachments

ATTACHMENT A

IMPORTANT : RIDING AND SAFETY

This vehicle is not a toy. The operator must give it the same respect and consideration he would any off-road motor vehicle. Study this Owner's Manual completely and pay particular attention to the following:

- The Daily Safety Checks
- Read and understand the Owner's Manual before operating this vehicle.
- The Owner's Manual should be kept in the waterproof plastic bag and stored in the compartment provided.
- This vehicle is designed for off-road use only; it is not intended for use on public streets, roads or highways.
- Children must have adult instruction and supervision at all times to operate this vehicle.
  Use by children under the age of 14 is not recommended.
- This vehicle is designed for operator use only; no passengers.
- Alcohol and drugs impair your judgement and reaction time. Never drink and drive.
- Always wear an approved helmet, eye protection and protective clothing.
- The driver must keep his feet on the footpegs whenever the vehicle is in motion. If not, he could be injured.
- Before starting: put transmission in neutral and check the throttle control for proper operation.
- Remember to apply the parking brake before getting off your ATV.
- Installation of accessory items may affect vehicle handling. See the Owner's Manual for information.
- Preserve the environment, ride responsibly and always know and obey laws and regulations governing ATV operation.
- Refueling: Shut engine off and make sure the area is well ventilated and free from any source of flame or sparks.
- This vehicle is equipped with low pressure tires. Tire inflation and type can affect vehicle handling. Check tire pressure and condition frequently. Use only recommended tires for replacement. See the Owner's Manual for information.
- Tire pressure gauge is provided in the tool kit container. Keep it with the vehicle at all times.
- Use an antenna flag in hilly terrain and sand dune areas.

PLEASE DO NOT TAMPER WITH NOISE CONTROL SYSTEM

To minimize the noise emissions from this product, Kawasaki has equipped it with effective intake and exhaust silencing systems. They are designed to give optimum performance while maintaining a low noise level. Please do not remove these systems, or alter them in any way which results in an increase in noise level.

ATTACHMENT B

G

GENERAL USE MODEL

THIS ATV IS INTENDED FOR
GENERAL RECREATIONAL AND
UTILITY USE.

OPERATOR ONLY—NO PASSENGERS

MINIMUM RECOMMENDED
OPERATOR AGE 14

THIS CATEGORY G (GENERAL USE) ALL TERRAIN VEHICLE (ATV) IS FOR OFF-ROAD USE ONLY, FOR GENERAL RECREATIONAL AND UTILITY PURPOSES.

THE SPECIALTY VEHICLE INSTITUTE OF AMERICA (SVIA) OFFERS TRAINING COURSES TO TEACH BASIC OPERATING SKILLS.

FOR INFORMATION, ASK YOUR DEALER.

KAWASAKI MOTORS CORP., U.S.A., CERTIFIES THAT THIS ATV COMPLIES WITH ALL APPLICABLE REQUIREMENTS OF THE VOLUNTARY STANDARD PROPOSED BY SVIA FOR CLASS 1 ALL TERRAIN VEHICLES.

THIS HANGTAG MUST NOT BE REMOVED BEFORE SALE.

SPECIALTY VEHICLE INSTITUTE OF AMERICA
A CODE FOR ATVenturers

- Know Your Owner's Manual
- Wear Your Helmet
- Ride Off-Road Only, Never on Public Roads
- Carry No Passengers
- Always Supervise Youngsters
- Ride Straight—No Alcohol or Drugs
- Lend your ATV to Skilled Riders Only
- Get Qualified Training
- Ride Within Your Skills
- Check the ATV Before You Ride
- Protect Your Eyes and Body
- Ride With Others—Never Alone
- Respect Riding Area Rules
- Keep Noise Levels Low
- Preserve the Environment
- Be Courteous to All You Meet

MAKE YOUR GREAT ATVenture A SAFE ONE

SVIA
Specialty Vehicle Institute of America

ATTACHMENT C

Kawasaki 1986

WE'VE GOT THE
EDGE

ALL TERRAIN VEHICLE SAFETY

All Terrain Vehicle sales and ATV safety are two topics much in dicussion lately, and it is a good bet that, at least, ATV sales are near the top of the agenda at your store. We find that the two items are clearly linked, and we believe that addressing the issue of ATV safety will pay benefits through increased sales.

What exactly is ATV safety? Well, on the simplest level it is nothing more than successful operation of ATVs without having an injury-producing accident. Where does it come from? It comes from an attitude...from an understanding that the ATV is not a toy, not the babysitter of the eighties. It comes from a willingness to approach ATV riding for what it is...a serious matter requiring judgement and skill. Does this mean that ATVs can no longer be fun? Absolutely not! Is ATV safety beyond the reach of the average buyer or user? Not at all. There are over 2 million ATVs in use today in our country, and our research indicates that between 3 and 5 different people operate the average ATV. This means somewhere around 6 to 10 million ATV riders are, for the most part, riding without incident.

Yes, there is legitimate concern over the accidents that are occurring, and Kawasaki shares deeply in that concern. One expression of this is the financial and other support given by Kawasaki to the Specialty Vehicle Institute of America (SVIA).

We are also taking very seriously the concerns of the Consumer Product Safety Commission of the United States as it presses its investigation of ATV safety. The CPSC investigation has now arrived at a sort of half-way point, with the last of 5 scheduled public hearings held last month in Los Angeles. The CPSC is now beginning an engineering effort to evaluate and compare various ATV designs; they are also conducting accident investigation and ATV user statistical research. It will be 6-8 months before the Commission approaches the ability to make any reasoned judgements regarding ATVs.

In this same time, Kawasaki has been working with other manufacturers and the SVIA on a variety of ATV safety programs and publications, and on a Voluntary Industry Standard that will address in a formal manner many of the equipment, configuration and information issues that are important to successful ATV operation.

However, what will really help resolve the issue at the CPSC is a simple thing...a reduction in ATV related injuries. This is an achievable goal; one that teamwork among manufacturers, dealers and the SVIA can accomplish.

We at Kawasaki, and you at your store can help reach this goal by continuing to provide quality products and by backing those products with enhanced delivery of information that leads and motivates the ATV rider toward safe riding practices.

Specifically, what does this entail? For our part, Kawasaki will continue to provide dealers with the best, safest products we can build. Our ATVs will often have features not available on any other manufacturer's line. As an example, all 1986 Kawasaki ATVs, except the Tecate, are equipped with an adjustable throttle limiter screw that can be used to keep speeds down and allow the beginner to concentrate on gaining riding skills at a comfortable pace. Kawasaki also features an ignition key as standard equipment on the KLF185 and KLF300 models, and our accessory catalog carries a key ignition switch for all other models. Although it may not seem like much at first, a removeable key can discourage operation of the ATV by people that are not yet skilled enough, or at least not yet exposed to the minimum level of safety awareness to be riding without supervision.

Kawasaki will also be making available a wide variety of safety and educational materials from the SVIA, each one of which is an opportunity to sell the buyer on the concept that safety is mostly basic common sense. Use these publications freely to educate buyers and users that safety is really in their hands and that ATV accidents are not inevitable.

Emphasize to the buyer, particularly first-time owners and family buyers, that it is vitally important to build riding skills gradually and through practice. Riding an ATV is not a difficult thing to master, but it does require certain skills. These skills, which are easily learnable, are essential to safe operation. These include following the instructions in the Owner's Manuals concerning riding techniques, and supplementing this wherever possible with the various SVIA booklets such as Tips for the ATV Rider or ATV Off Road Practice Guide.

If a new user is not confident that they can master the skills through self-directed action, the SVIA has developed a comprehensive training program and is in the process of spreading its availability. You should give serious consideration to having someone in your dealership certified as a SVIA instructor, or at least, learn who in your area is certified so you can refer people to a source for this instruction. (You can discover this by visiting the SVIA booth in our product display area at this show.)

Regardless of whether you decide to become directly involved in the SVIA training program, your dealership can become a source of information on ATV safety. The dealer is the one to whom the ATV buyer looks for information; the dealer is the expert. This provides you with the perfect opportunity to talk safety to a receptive audience. Here are some of the important points to be emphasized:

Match the ATV to the user's capability and need. This is a particular problem with young kids, where there is some temptation to buy a large ATV for small children on the theory that the kids will grow into it. The trouble with this is that youngsters on full-size ATVs are seriously over-represented in the ATV accident statistics. Kawasaki does not make any ATVs that are intended for children under 14 years of age. This recommendation is not given lightly, rather it is an acknowledgment that use of full-size ATVs by kids who are not yet physically and/or emotionally capable of handling them is a significant accident factor.

Sell safety equipment. Too many ATV buyers (and the ultimate users of those ATVs) apparently do not understand that, as with dirt bikes, falling down occasionally is a fact of life. With the right equipment (helmet, eye protection, boots, long pants, long-sleeve shirt or jersey and gloves), the chance of injury is greatly reduced. However, many of the people killed in accidents to date were not even wearing a helmet. Again, particularly with family users, the importance of having a properly fitting helmet available for each customer cannot be overemphasized.

Try to spread the safety message beyond the purchaser. Remember that our research indicates as many as 5 people may ride a particular ATV at various times. In family groups, try to get the whole family committed to safe operation. With the single buyer, who will undoubtedly share the ATV with others, try to emphasize the importance of carefully instructing new riders and not just "turning them loose". If you stop and think about it, a customer would feel pretty good about your store if your last action in delivering the vehicle is to urge that he use it safely and responsibly.

Keep the ATVs off the highways. Far too many injuries and deaths have occurred while operating the ATV on a highway. The ATV is not intended to be an on-road vehicle, and such use is dangerous. Do not encourage or assist customers in obtaining on-road licensing.

It is clear from our experience that the large majority of ATV accidents could easily have been prevented if the people involved had accepted the fact that the ATV is not a toy and had used good common sense. We can prevent many future accidents if we can give the ATV user the attitude that they are responsible for ensuring their own safety. With your help, we will ensure a healthy market for the ATV into the future.

SCHMELTZER, APTAKER & SHEPPARD, P.C.
COUNSELORS AT LAW
1800 MASSACHUSETTS AVENUE, NORTHWEST
WASHINGTON, D.C. 20036-1879
CABLE SHIP UI TELEX [illegible]
[illegible]

EDWARD SCHMELTZER
EDWARD J. SHEPPARD IV
J. THOMAS ESSLINGER
IRA MICHAEL SHEPARD
GEORGE J. WEINER
MICHAEL K. BROWN
PAUL M. HEYLMAN
STEPHEN HORN

COUNSEL
EDWARD APTAKER
CHRISTOPHER HARRIS
MARGARET A. FREESTON

PAUL M. [illegible]
[illegible] ROGER TRUITT
ROBERT L. [illegible]
PATRICK O. CAVANAUGH
DEANA FRANCES DUDLEY
ROBERT L. DUSTON
DONAVEE A. BERGER*
HAROLD L. OLSEN*
MARY ROSE KORNREICH PH.D.*
PAUL ALLAIRE*
DEAN LAWRENCE BURRELL*

*NOT ADMITTED IN D.C.

June 19, 1987

The Honorable Dennis E. Eckart
House of Representatives
Member, Committee on Energy and
  Commerce
1210 Longworth Building
Washington, D.C. 20515-3511

Dear Congressman Eckart:

This letter is in response to your request for information about American Honda Motor Company's marketing practices for all-terrain vehicles (ATVs).

First, as background, approximately 1,700 dealers in the United States sell Honda ATVs. All these dealers are independent businesses. Many of the dealers sell other Honda products, such as motorcycles or power tools, and a large number also sell ATVs and other products produced by different manufacturers.

In order to sell Honda ATVs, dealers enter into contractual relationships with American Honda. Each individual contract provides detailed requirements that the dealer must follow in selling, setting up and servicing Honda ATVs. Each contract also sets forth procedures for terminating the agreement.

Safety at Dealership Level

Safety is a key element in the sale of Honda ATVs. To ensure that customers receive safety information at the dealership level, American Honda has developed many different approaches. These include:

- Sending letters and Service Bulletins to dealers explaining in detail steps they must take to make customers aware of ATV safety concerns. Enclosure A includes samples of safety-related letters and bulletins American Honda has sent to dealers from

1984 to the present. Note particularly the Service Bulletin entitled "Honda Dealers' Obligation to Provide ATV Safety Information to Customers."

- Employing six Rider Education and Recreation Specialists throughout the country and a national coordinator. The major function of these employees is to visit dealerships and ensure that dealerships provide full safety information to customers, to coordinate training activities, and to plan local safety awareness events. The American Honda sales and service representatives also discuss safety issues with dealers.

- Establishing a procedure for financial incentives for dealers to make customers aware of safety concerns. The major financial incentive is that in order to receive payment for setting up an ATV (the dealers must set up and inspect the ATV before delivery), the dealer must send American Honda a signed warranty and the dealer must sign the delivery set-up and check list and pre-delivery certification that states "I also hereby certify that the customer has been made aware of skill training (safety) materials, courses and the importance of training for skill improvement." Further, the customer and dealer must sign the statement "I have been made aware of the importance of reading the Owner's Manual, skill training safety materials, courses, SVIA video and the importance of training for skill improvement." (Enclosure B)

- Making available to the dealer free video tapes, brochures and counter cards that explain safety concerns. These must be available to customers at the dealerships.

- Encouraging dealers' involvement with safety by including safety articles in monthly news letters, describing safety actions of individual dealers, rewarding dealers for safety activities through dealer contests, and encouraging elected dealer representatives to write each dealer in their state stressing the need for dealers and all their staffs to promote safety. (Sample letters are enclosed at Enclosure C.)

- Establishing procedures to bring about dealer compliance with safety requirements including termination of contracts where appropriate.

General Safety Efforts of American Honda

The enclosed listing of Safety Materials and Programs developed and distributed by American Honda from 1981 to the present demonstrates the company's general commitment to ATV safety information. (Enclosure D)

Safety Materials Regarding Use Of ATVs By Children

In order to supplement the safety information dealers provide orally to customers, American Honda has adopted many written safety messages, for both the general public and prospective purchasers, that relate to the use of ATVs by children. These materials include include:

- Age labeling on all ATVs, and labeling stating the need for adult supervision and instruction. This labeling was voluntarily adopted by American Honda and the other members of the Specialty Vehicle Institute of America (SVIA) in accordance with the first draft voluntary standard of August, 1985. See the enclosed sample 1988 labeling for Honda ATVs. (Enclosure E)

- Hang tags on all ATVs, with age recommendations and warnings regarding the need for adult supervision and instruction. These hang tags are affixed at the factory and dealers are required to assure they remain attached to the ATV when the customer receives it. They must also be on display ATVs. These hang tags were developed in the voluntary standards process and are now in use even before the voluntary standard is adopted.

- Owners Manuals which include age recommendations and skills practice instructions. Approximately 20 percent of the Owners Manuals is devoted to safety and operating techniques. Dealers must encourage customers to read the Owners Manual, and each ATV contains a compartment for carrying the Manual. In addition, machines are labeled "Read Owner's Manual Carefully Before Riding. It Contains Important

Safety and Riding Instructions. See Manual for Further Details on Label Information. Always Keep Manual With Vehicle."

- Posters and counter-cards for use in dealerships. The current posters and counter cards depict a father and son with an ATV. The message is "The most important piece of safety equipment your kids have, is you." The dealers are required to display these posters and counter-cards, and they are designed to be eye-catching. (Pocket Part of Notebook)
- Safety brochures, including "Parents, Youngsters and ATVs" which provide advice to parents on evaluating their child, skills training, and supervision. The dealers must provide these brochures to ATV customers and must encourage them to read them. Enclosure F
- Age recommendations and other safety statements in sales brochures. Enclosure G
- Two safety video tapes, one from SVIA and one from Honda, to be shown in dealerships and to be loaned free of charge to prospective purchasers. All dealerships must have a video machine in a location where customers can watch the safety videos.
- Advertising directed solely at safety concerns, such as Lyle Alzado's TV safety commercials for Honda that appeared in prime time paid spots, and a current safety commercial utlizing the theme "The most important safety equipment is you."

Our responses to the specific requests you made are as follows:

(1) copies of written communications and/or instructions from your company to dealers and sales representatives regarding the marketing of ATVs to children under sixteen. This may include, but is not limited to, information provided regarding the appropriate age/ATV-size correlation, training requirements, and the use of safety equipment;

The enclosed Honda Service Bulletin, entitled "Honda Dealers' Obligation to Provide ATV Safety Information to

Customers" contains the basic requirements. Additional instructions to dealers are contained in the enclosed sample letters to dealers from American Honda. (See Enclosure A.) As stated above, the dealers must also sign statements that they have informed the buyer of the safety materials, including age recommendations and the importance of safety and practice; and that the buyer has been made aware of safety materials, training courses and the SVIA video tape. The customer must also sign the pre-delivery form indicating awareness of the safety materials and video. Moreover, the six Rider Education and Recreation specialists are responsible for visiting dealers and emphasizing safety concerns, as are sales and service representatives.

(2) copies of any written information concerning safety precautions which dealers are required to provide to consumers prior to the purchase of an ATV for children under sixteen;

Enclosed are copies of the five items the dealers are required to provide:

Parents, Youngsters and ATVs - brochure (Enclosure H-I)

Fun and Safety: The Winning Combination - brochure (Enclosure H-II)

Honda ATV Safe Ride Guide - fold out brochure (Enclosure H-III)

Sample Owner's Manual (Enclosure H-IV)

Sample Hang Tags (Enclosure H-V)

(3) copies of written corporate policy(ies) with respect to the marketing of ATVs to children under sixteen;

American Honda labels its smallest vehicle, the Fourtrax 70, "not recommended for children under 12." Its adult size vehicles are labeled "not recommended for children under 14." All vehicles are labeled "Adult Supervision and Instruction Required." Further, as the enclosed sales brochures demonstrate, age recommendations and other safety information are included in sales materials.

American Honda selected age 12 as the minimum age for operation of the smaller size ATV sold based upon the report of a safety education specialist in the Maryland State Department of Education ("The Young Child and the Motorized All-Terrain Vehicle," a study by Donald LaFond, Safety Education Specialist, Maryland State Department of Education, 1984). This study was done on behalf of the Specialty Vehicle Institute of America. The 12 year age recommendation was a conservative application of the initial SVIA study.

The upper age limit recommendation of 14 was picked because the anthroprometric size data available to American Honda and the age at which some states allowed people to begin driving automobiles both suggested 14 as an appropriate minimum age. These ages are merely recommendations, and the Owner's Manual and other materials supplied with this letter stress that parents must consider the coordination, size, judgment and ability of the child in question before a child is allowed to purchase or operate any ATV.

(4) copies of written corporate policy(ies) with respect to disciplining dealerships and sales representatives who inappropriately market ATVs to children under sixteen;

American Honda, under the various state laws governing the relationship between a vehicle distributor and its dealers, has no authority to "discipline" one of its dealers. It can use moral persuasion. It can seek to influence its dealer's activities, but the only authority it has is to terminate the contractual relationship which gives to the dealer the right to sell Honda products. Even the right to terminate is seriously restricted by state law. Most states permit cancellation of a dealer only upon an affirmative showing to either an administrative or judicial body of "good cause" for cancellation. Despite the serious limitations imposed on American Honda by these laws, it has in place a systematic approach by means of which dealer inadequacies can be brought to the attention of the dealer. First of all, we are enclosing a copy of the relevant sections out of the dealership agreement which evidence the dealer's responsibility to live up to the expectations of American Honda (Enclosure I), as well as maintaining Honda's good name in the community. Since dealerships are independent businesses, the salesmen are employees of those businesses. Therefore, American Honda cannot directly interfere with the day-to-day operation of the businesses. American Honda can approach the dealer principals, and point out the need to obtain their cooperation in making sure that all of the dealerships' employees understand that the rules laid down by and between American Honda and the dealership must be followed at all times.

Documentation of dealer failures is handled on a three-tier basis. That is, if a dealership is found to be in violation of any rules or contractual terms, for any reasons, then the dealership principal is sent a written notice from the Zone Manager with regard to the infraction. Obviously, the dealership is given the opportunity to respond, and the matter may further be discussed with the Honda sales representative. If any infraction is found to be continuing, following the first notification, then a second notification is sent from the American Honda corporate headquarters, with a copy to the Zone and District representatives. It should be pointed out, that it is rarely necessary to go beyond this step, and most matters are resolved reasonably quickly.

If there is a yet continuing problem with the dealership, then the matter is turned over to our outside legal counsel, who will make direct contact with the dealership principals, in order to advise the dealership of possible legal measures which may be taken against the dealership. We are enclosing representative samples of letters sent to the dealership, with regard to infractions related to one aspect of ATV safety concerns (Enclosure J). These procedures are routinely followed for all dealer set up and safety related problems, or for any misrepresentations which may be made by the dealership which come to the attention of American Honda.

> (5) a listing of actions taken by your company to discipline dealerships and/or sales representatives with respect to violations of corporate policy as described in #4 above; and

As we have indicated, dealer relationships and thus the ability to "discipline" a dealer is controlled by state law. Those laws do not sanction withholding product from a dealer or taking steps which would affect the purchase price by the dealer, i.e., fines or the like. Because good cause must be shown to cancel a dealer, it has been our experience that this ultimate sanction will be approved only in the most egregious circumstances. From a practical point of view, that has meant litigation to get the approval of a court or administrative body to cancel a dealer. The state of Washington, for example, requires a distributor to pay to a dealer twice the value of the dealership in the event of wrongful termination.

American Honda has brought suit against a number of its dealers for failure, among other things, to follow its safety instructions. None of those cases has gone to final judgment.

The overwhelming majority have been settled on the basis of a consent decree requiring the dealer to comply with his Honda dealer agreement.

We would emphasize that it is usually not necessary to engage in litigation to obtain dealer compliance with American Honda safety instructions. Our dealers understand the necessity to comply with safety regulations and it is only in cases of poor management or misguided employees that it has found litigation to be necessary.

> (6) with respect to Mr. Isley's commitment to "redouble our efforts to make sure [inappropriate marketing] does not continue," please describe your company's current and proposed actions in this regard.

American Honda is proud of its extensive safety activities, and considers itself the industry leader in promoting responsible marketing of ATVs. We believe the enclosed materials demonstrate American Honda's enthusiastic and extensive commitment to safety, and we will continue the progress these efforts demonstrate.

Sincerely,

Michael A. Brown

Enclosures

MAB:bb

YAMAHA MOTOR CORPORATION, U.S.A.
6555 KATELLA AVENUE • CYPRESS, CALIFORNIA 90630
MAIL ADDRESS: P.O. BOX 6555, CYPRESS, CALIFORNIA 90630
PHONE: (714) 761-7300

June 18, 1987

The Honorable Dennis E. Eckart
Congress of the United States
1210 Longworth Building
Washington, D.C. 20515-3511

Dear Congressman Eckart:

This letter is in response to your letter of May 27, 1987 addressed to Mr. Watanabe concerning All-Terrain Vehicles (ATV's), and Yamaha's policies and publications addressing safety-related issues. As an initial matter, you should be aware that Yamaha is an active member of the Specialty Vehicle Institute of America ("SVIA"), and has supported efforts by SVIA to inform and educate riders about responsible operation of ATV's. Yamaha has also participated in industry efforts to develop voluntary standards for ATV's, in cooperation with the Consumer Product Safety Commission. Additionally, Yamaha has supported efforts to develop state legislation which would address ATV safety-related issues. These are all ongoing industry-wide efforts to improve the safety of ATV operations through awareness, information and regulation.

While differences exist among various concerned parties about how to most effectively address safety issues, Yamaha and the industry have continued their efforts to put in place a comprehensive program. The steps taken to date by Yamaha include comprehensive notice and warning labels on the ATV's themselves, distribution to dealers and consumers of safety and riding information in the Owner's Manuals and other literature, notification of age recommendations to purchasers and riders, and distribution of safety-related videotapes to provide relevant information to consumers. Yamaha is committed to ensuring that consumers are well informed about responsible ATV operation, including age/ATV size correlations.

As for your specific questions, the following information is relevant:

Questions 1, 2 and 3

Yamaha's policy is to recommend that full-size ATV's (above 80cc displacement) not be operated by children under 14 years of age. In order to avoid inappropriate operation of full-size ATV's by children under 14, Yamaha offers an 80cc displacement ATV for those over 12, and a 60cc displacement ATV for those over 6. Our experience with ATV-related injuries supports the appropriateness of our recommendations. Yamaha's recommended age/ATV size correlations have been clearly communicated both to dealers and customers. It is important to note that Yamaha recommends that *all* children have adult supervision when operating ATV's.

One important vehicle for communicating with dealers and customers concerning the appropriate age/ATV size correlation, use of safety equipment, appropriate riding practices, and development of riding skills is the Owner's Manual. The Owner's Manual accompanies every ATV, and is provided to each customer. The manual specifies current age recommendations, provides safety warnings (e.g., don't ride double, wear protective clothing, etc.), and provides a variety of cautions and warnings intended to promote responsible riding. In addition, each vehicle has a variety of warning labels attached to it containing important safety information. Yamaha also distributes a video for consumer viewing containing similar safety cautions to its dealers, and has shown the video at dealer shows to sensitize dealers to the importance of safety issues. Attachment 1 is a sample Owner's Manual. Pages 4-5 indicate the content and location of warning labels on the machine, pages 7-14 contain safety information, and pages 45-60 provide safe riding cautions and warnings.

Questions 4 and 5

Distributor control of the retail dealers is governed by contract and state law. Some states have regulatory/administrative bodies which control such relationships. Many states have so-called franchise laws for motor vehicle dealers. In general, the intent and effect of state laws is to protect the retail dealer in its relationship with the distributor. As such, it is difficult to undertake disciplinary action against dealers for inappropriate marketing, unless it can be demonstrated that an agreed upon objective standard for marketing exists (i.e., no sales of full-size vehicles are appropriate for use by children under 14), a dealer repeatedly and consistently violates this standard in its marketing efforts, and the distributor has proof of the inappropriate marketing efforts.

While Yamaha is committed to ensuring appropriate marketing of ATV's and would not condone sales tactics such as those shown recently on CBS' "60 Minutes", Yamaha has not received information from customers, sales representatives, or other parties, which would indicate any pattern of inappropriate marketing. At present, there is insufficient evidence to warrant the initiation of disciplinary action against any dealer.

Question 6

Yamaha is committed to ensuring that adequate age and operating information is available to the customers. The most effective way to ensure this is by labeling on the products, and providing information on responsible operation of ATV's directly to consumers. To this end, Yamaha provides hang tags, notice and warning labels on the vehicle, and information in the Owner's Manual. This is consistent with the approach taken generally in the motor vehicle industry, such as braking information provided to auto purchasers to assure consumer access to objective information. In this regard, ATV industry efforts to inform the consumer exceed those of most other industries. Yamaha is, however, aware that the more consumer information which is available to ensure responsible operation of ATV's, the greater the likelihood of responsible operation. This includes information on appropriate age/ATV size correlation. Yamaha's support for model state legislation is further evidence of its commitment to ensuring responsible marketing of ATV's. Yamaha is actively considering additional ways of conveying objective information to the consumer and of minimizing any dealer misrepresentation, and is prepared to work with various interested parties in this effort.

We hope the above is responsive to your request. If you have any questions, please feel free to contact me.

Sincerely,

Michael J. Schmitt

Michael J. Schmitt

MJS:jep
LD #30

SUZUKI

U.S. SUZUKI MOTOR CORP.
P.O. BOX 1100, 3251 EAST IMPERIAL HIGHWAY, BREA, CA 92621-6722

TEL (714) 996-7040 TELEX 68-3348 FAX (714) 970-6005 CABLE ADDRESS "COLLEDA"

June 25, 1987

The Honorable Dennis E. Eckart
U.S. House of Representatives
1210 Longworth Building
Washington, D.C. 20515-3511

Dear Representative Eckart:

Your letter of 27 May 1987 to Mr. Tani has been referred to me for reply. In your letter, you requested information about the efforts of U.S. Suzuki Motor Corporation (Suzuki) to promote appropriate marketing practices for all terrain vehicles (ATVs), particularly with regard to the marketing of adult-sized ATVs for children.

I would like to assure you that Suzuki is firmly committed to the concept of appropriately matching ATV users with ATV products. The following information shows that Suzuki has been promoting proper matching of ATVs and ATV riders since well before Congress became involved in this issue. Suzuki has a longstanding and continuing commitment to this concept.

Over the past several years, Suzuki has engaged in a wide variety of activities to enhance ATV safety. Specifically, I would like to provide you with the following materials in response to your request. I have added underlining to selected items for your ease of reference:

(1) copies of written communications and/or instructions from Suzuki to dealers and sales representatives regarding the marketing of ATVs to children under sixteen. This may include, but is not limited to, information provided regarding the appropriate age/ATV-size correlation, training requirements, and the use of safety equipment.

a. Attachment 1 is a copy of a letter sent in October 1984 to all Suzuki dealers. This letter was sent along with a supply of safety booklets entitled "Tips for the ATV Rider". The letter advises dealers that "[w]e hope all ATV users will become more knowledgeable of ATV riding techniques, and the importance of a 'Safety First' attitude towards ATV operation. By promoting ATV safety, you will earn continuing loyalty of your customers."

The "Tips" booklet that was included with the letter is published by the Specialty Vehicle Institute of America ("SVIA") and contains a variety of important safety messages. The booklet stresses the importance of using protective safety equipment, and contains a provision in the "Safe Riding Practices" section that states "Don't let youngsters ride full sized ATVs."

b. Attachment 2 is a copy of an October 1985 letter from former Suzuki President Senga to all Suzuki dealers. This letter explicitly states that Suzuki encourages all dealers "...to make sure that every customer who purchases an ATV buys one that is of the correct size for the rider, and to make sure they understand the age recommendations for each vehicle they purchase."

This letter also explicitly encourages dealers to promote the SVIA rider training program through a variety of techniques. The various booklets included with Mr. Senga's letter discuss the importance of using safety equipment. Attachment 3 is a copy of "Tips for the ATV Rider/Off-Road Practice Guide", the two-part safety information booklet included with and referred to in Mr. Senga's letter. The "Tips" section of this booklet contains a provision in the "Safe Riding Practices" section that states "Don't let youngsters ride full sized ATVs."

Attachment 4 is a copy of Suzuki's reprint of the "Parents, Youngsters and ATVs" safety information booklet mentioned in Mr. Senga's letter. The "Parents" booklet includes the following advice on its first page:

> Deciding whether or not your child is ready to ride an ATV is a particularly crucial determination that you, as the child's parent, must make. SVIA strongly urges you to carefully read the section in this booklet about determining your child's readiness to ride an ATV, and then go through the readiness checklist in the back of the booklet. Do not permit your child to ride an ATV if you have any doubt that he or she has the capabilities to operate an ATV safely.

In Part I of the "Parents" booklet, in a section entitled "Important Note to Parents", the booklet contains the following advice:

> It is important that your child always rides an appropriate-sized ATV. Never put your child on a vehicle that requires them to "reach" to put their feet on the footrests or their hands on the handlebars. Some manufacturers [this includes Suzuki] have recommended and/or labeled ATVs for use by certain minimum ages and above. Parents should follow these manufacturers' recommendations.

c. In November and December 1985, Suzuki held a series of 1986 New Model Dealer Meetings across the United States to introduce 1986 model products and programs to the dealers. A safety information booth was featured as part of these dealer meetings. Suzuki prepared a special safety videotape entitled "It Starts Here" for these dealer meetings. A copy of this videotape is enclosed. This videotape emphasizes the important role that the dealer plays in making customers aware of safe riding practices. The video stresses the importance of training, and supervising children, and reminds dealers to match the size of the rider to the vehicle at the point of purchase. The video was presented many times during the course of each dealer meeting, and many dealers had an opportunity to view the video and discuss it with the people at the safety booth.

In addition to the safety booth and safety video, each dealer received a three-ring binder of information. The binder featured a section on safety, a copy of which is attached as Attachment 6. The section on ATV safety urges dealers to "...take advantage of SVIA's programs to encourage a safe riding attitude among your customers. As you know, the SVIA has developed an ATV Rider's Course which is available on a nationwide basis." The ATV safety section goes on to encourage dealers to promote the SVIA rider training program through a variety of techniques, and informs dealers that:

> Proper delivery of the ATV is also very important. Follow the delivery instructions in your sales guide to make sure every new ATV owner has adequate safety information. We encourage you to make sure that every customer

> who purchases an ATV buys one that is of the correct size for the rider, and to make sure that they understand the age recommendations for each vehicle they purchase. Always make it a point to try to sell a helmet and other protective apparel with every new vehicle. Stress the importance of supervising youngsters to all owners of the child-sized ATV. Point out the owner's manual and the two-part booklet and stress the importance of reading and following their tips and warnings.

The safety information also includes a section entitled "Delivering the Motorcycle or ATV". This section promotes rider training, use of safety equipment, supervising youngsters, and other important safety steps in delivering a product to the customer.

d. Attachment 6 is a copy of a section of the "1986 Suzuki Motorcycle/All Terrain Vehicle Sales Guide". This "Delivering the Motorcycle or ATV" section is the same as that featured in the three-ring binder described in item c., above. All Suzuki dealers received a copy of this sales guide when they attended the dealer meeting.

e. Attachment 7 is a copy of a bulletin sent to each Suzuki District Sales Manager in March 1986. District Sales Managers are Suzuki's field representatives who visit dealers to promote product sales. The bulletin was sent along with a copy of the videotape "It Starts Here". As discussed previously, this videotape was produced for use at Suzuki's 1986 New Model Dealer Meetings, and emphasizes the important role that the dealer plays in making customers aware of safe riding practices. As discussed above, the video reminds dealers to match the size of the rider to the vehicle at the point of purchase.

The District Sales Managers were encouraged to carry the video with them and to show it to each Suzuki dealer that they visited, and to emphasize to the dealers the importance of safety to a successful dealer/customer relationship.

f. Suzuki held a national 1987 New Model Dealer Meeting in October 1986 to introduce new models and programs to the dealers. A safety booth was again a feature of the dealer meeting. Attachment 8 is a copy of the safety section of the three-ring binder that was distributed to the Suzuki dealers. This section again emphasizes the importance of rider training courses, use of protective equipment, and age recommendations for ATV buyers.

g. Attachment 9 is a copy of the Certificate of Vehicle Pre-Delivery that Suzuki dealers use for the pre-delivery and delivery of a new or used Suzuki motorcycle or ATV. This form, as revised in October 1986, contains a section entitled "Delivery to Customer". Among the checkpoints in this section are:

> OWNER'S MANUAL -- Explain Periodic Maintenance Responsibilities/Emphasize Importance of Reading for Customer Safety and Servicing of Vehicle.
>
> SAFETY TIPS BOOKLETS -- Review Supplied Booklet and Stress Importance of Safe Riding Practices.
>
> SAFETY VIDEO (ATVs) -- Review Tape With Customer.
>
> RIDER COURSE -- Suggest an MSF or SVIA Rider Course. Call 1-800-447-4700 for nearest course.

The Certificate also contains a section entitled "Customer Acceptance". The customer signs this section, acknowledging that "I understand the importance of following the owner's manual instructions and safety booklet suggestions". The owner's manuals and safety booklets contain specific information about recommended minimum ages, supervising children, use of safety equipment, and other important safety information.

h. Attachment 10 is a copy of a sales bulletin sent to all Suzuki dealers in December 1986. This sales bulletin was sent along with a supply of ATV safety information hangtags. The hangtags state the minimum recommended operator age for the ATV, provide information about the SVIA rider training program and encourage the reader to ask the dealer for further information, and list a number of important safety precautions, including:

> Wear Your Helmet
>
> Always Supervise Youngsters

Get Qualified Training

Protect Your Eyes and Body

The sales bulletin promotes the proper matching of ATVs and riders and promotes ATV rider training. Specifically, the sales bulletin advises dealers to

> ...use these hangtags to your advantage while selling a vehicle. Show your customer the hangtag and explain what kinds of uses the particular ATV is designed for. Discuss ATV safety with him or her. Point out that the Specialty Vehicle Institute of America (SVIA) training course is an excellent place to learn proper riding techniques, and give him or her the number to contact a local SVIA instructor. If you do not know any SVIA instructors in your area, call 1-800-447-4700 and ask for the nearest available instructor to you. When you show an active interest in the safety of your customers, you will be rewarded by gaining the respect and repeat business of that person.

i. Attachment 11 is a copy of a letter sent to all Suzuki dealers in December 1986. The letter discusses the sale of the Suzuki LT50 model. The LT50 is a small, slow (7 to 8 miles per hour maximum speed as delivered), and lightweight ATV intended for use by children 6 years old and over. The letter advises dealers to encourage customers "...to carefully review the owners manual and the safety booklet, 'Parents, Youngsters, and ATVs', before allowing their youngster to ride the LT50. Tell them to supervise their youngster at all times and to never let their youngster ride without a proper helmet and other protective gear."

j. Attachment 12 is a copy of the "Delivering the Motorcycle or ATV" section of the 1987 Suzuki Motorcycle and All Terrain Vehicle Sales Guide. This sales guide was sent to all Suzuki dealers in March 1987. As with the 1986 version, this section emphasizes safety information, rider training, and use of safety equipment.

k. Attachment 13 is a copy of a letter which all new Suzuki dealers receive when they are established as a Suzuki dealer. The letter states that Suzuki encourages all dealers "...to make sure that every customer who purchases an ATV buys one that is of the correct size for the rider, and to make sure they understand the age recommendations for each vehicle they purchase."

Each new dealer receives two copies of the SVIA videotape "The ATV Rider's Guide to Safety", a 19 minute introduction to ATV riding and ATV safety. Dealers are encouraged to show this video to each new ATV purchaser, and to lend this video to customers so they can share it with their entire family. The SVIA video covers a broad spectrum of safety guidelines and ATV riding techniques. The video stresses the use of safety equipment and encourages viewers to take the SVIA rider training course. The video also specifically advises viewers to "...keep kids on kids' ATVs and always supervise youngsters...", "...always supervise youngsters...", and "...don't let little kids ride machines that are too big for them to handle...."

Each new dealer also receives a supply of Suzuki safety publications developed by the SVIA. These publications stress the importance of using safety equipment. The "Tips" section of the two-part safety booklet that is sent to the new dealers contains a provision in the "Safe Riding Practices" section that states "Don't let youngsters ride full sized ATVs."

The new dealer letter also strongly encourages dealer support for the SVIA rider training program through a variety of techniques.

l. Attachments 14 and 15 are copies of letters sent to high ATV sales volume Suzuki dealers in early 1987. These letters were sent along with one or two extra copies of the SVIA videotape "The ATV Rider's Guide to Safety". These extra copies of the video were sent at no charge so that dealers could use them in a video loan library program for family viewing, as described above. As described in item k., above, the video provides a strong safety message promoting, among other things, appropriate age/ATV size matching.

These letters also encourage dealers to "...recommend to every customer that he or she take the SVIA rider training course", and lists the toll-free 800 number to find the nearest SVIA instructor.

m. Attachment 16 is a copy of an advertising and sales promotion bulletin sent to all Suzuki dealers this month. This bulletin was sent to the dealers along with a copy of a new advertisement (Attachment 17) that Suzuki will be placing in upcoming ATV industry trade publications. The advertisement advocates promoting safety with every sale. The ad specifically emphasizes appropriate matching of vehicle size to the rider with every sale, promotes the use of safety equipment, and promotes training courses. The dealer bulletin emphasizes, in addition to the content of the ad itself, that dealers should point out the minimum rider ages for Suzuki's two youth model ATVs. The bulletin also encourages that dealers discuss the importance of safety with all their employees, and post the safety ad on an employee bulletin board or a similar area.

n. In addition to the many written communications about ATV safety from Suzuki to Suzuki dealers and Suzuki District Sales Managers, Suzuki has also made direct safety mailings to Suzuki ATV owners. Following Suzuki's decision to label ATVs with a minimum recommended rider age beginning with 1986 models, Suzuki decided to inform prior owners of the minimum recommended rider age, and other important safety information. Attachment 18 is a copy of a letter sent to all registered owners of 1983, 1984, and 1985 model year Suzuki 50cc ATVs (Suzuki's first ATVs were introduced in model year 1983). The letter contains the following specific provisions:

> Make sure that youngsters only ride an ATV that is the correct size for them. No youngster under age 6 should ride the 50cc Suzuki ATV.
>
> Always have your young rider wear a helmet and other protective apparel. The severity of many accidents could have been lessened dramatically if only the rider had been wearing protective apparel.
>
> Get qualified training for yourself and your youngster, as outlined below.

The letter goes on to provide information on the SVIA Rider Course. Suzuki also sent a copy of the "Parents, Youngsters and ATVs" booklet, described earlier, with this letter.

This mailing was first made in November 1985, and has been repeated in August 1986 and February 1987.

Attachment 19 is a copy of the letter sent to owners of 1983, 1984, and 1985 model year full-sized Suzuki ATVs. This letter contains these provisions:

> Make sure that youngsters only ride an ATV that is the correct size for them. Full-sized Suzuki ATVs (125cc and larger) are designed for use only by riders 14 years of age and older.
>
> Always wear a helmet and other protective apparel. The severity of many accidents could have been lessened dramatically if only the rider had been wearing protective apparel.
>
> Get qualified training, as outlined below.

As with the letter sent to 50cc owners, the full-sized owner letter goes on to provide information on the SVIA Rider Course. Suzuki also sent a copy of the two-part "Tips for the ATV Rider/Off Road Practice Guide" booklet, described earlier, with this letter.

Also as with the mailing made to owners of 50cc Suzuki ATVs, this mailing was first made in November 1985, and has been repeated in August 1986 and February 1987.

o. In addition to dealer, District Sales Manager, and owner mailings, Suzuki has also supported the dealer communications programs conducted by the SVIA. As examples of the dealer safety promotion communications conducted by the SVIA, I would like to call your attention especially to the following:

> Attachment 20 is a copy of the cover letter of a July 1985 mailing to all ATV dealers. This cover letter reminds dealers that "...you, at the point of purchase, are in the best position to make your customers aware of the need for training and education before they leave your showroom." The mailing consisted of a number of safety related publications, including Attachment 21, a copy of the "Safety Tracks" newsletter. This issue of the newsletter featured a column entitled "Parents -- The Key to Family Fun on ATVs". This column contained important advice such as "...encourag[e] parents to buy the right size model for their child," "[e]ncourage the parents to buy a complete set of safety gear

for the child's protection," "[e]ncourage parents to enroll their children in an ATV Rider's Course before they go riding with the family", and "[a]dvise parents that even after the children have completed a safety course, they should always be supervised while they ride and are frequently reminded about the safety procedures they have learned."

The "Tips", "Practice Guide", "Parents, Youngsters", and other SVIA safety publications discussed above were also included in this 1986 mailing.

On March 17, 1987, SVIA made a mailing to all ATV dealers. Attachment 22 is a copy of the cover letter of this mailing. This cover letter states "[r]emember to always advise customers about ATV safety, including reading of the owner's manual, SVIA and its training courses, wearing a helmet and protective equipment, and supervising of all young riders. Do not recommend riding double or riding on paved roads. Also, strictly follow age recommendations labeled on each ATV".

On March 20, 1987, SVIA made an additional mailing to all ATV dealers of an ATV safety information kit. Attachment 23 is a copy of the "ATV Media and Customer Information" portion of the safety information kit. This portion contains these specific recommendations, among others:

> Strongly urge all riders to enroll in an ATV Rider's Course conducted by a trained instructor. Post the name and number of your local instructor (call 1-800-447-4700 to find one or 1-714-241-9256 to become one).
>
> Stress the importance of always wearing a helmet and protective apparel.
>
> Follow the age recommendations labeled on the vehicles. Don't ever recommend an adult-sized vehicle for youngsters.

(2) copies of any written information concerning safety precautions which dealers are required to provide consumers prior to the purchase of an ATV for children under sixteen.

a. Suzuki began selling ATVs in the Fall of 1982. Every Suzuki ATV has always borne a label urging the use of safety equipment, and stressing the importance of adult supervision of riders under 16 yearr of age.

b. Beginning with the 1986 model year, every Suzuki ATV bears a warning label which states the minimum recommended age of the ATV rider, the importance of adult instruction and supervision of ATV riders under age 16, the importance of the use of safety equipment, and other important safety information. The minimum age for Suzuki's full-sized ATVs is 14 years of age. Attachment 24 is a copy of a typical Suzuki ATV warning label.

c. 1987 and later model year Suzuki ATVs are shipped to the dealer with a consumer information hangtag attached. This hangtag is displayed with the ATV on the dealer's showroom floor. The hangtag states the minimum recommended operator age for the ATV, provides information about the SVIA rider training program and encourages the reader to ask the dealer for further information, and lists a number of important safety precautions, including:

    Wear Your Helmet

    Always Supervise Youngsters

    Get Qualified Training

    Protect Your Eyes and Body

    Attachment 25 is a copy of a hangtag for a Category G, General Use, ATV, which is the most common ATV category. Attachments 26 and 27 are copies of Category Y, Youth Model, ATV hangtags which are attached, respectively, to Suzuki's 50cc and 80cc ATVs.

d. Before buying a Suzuki ATV, many customers will have seen an advertisement for Suzuki ATVs. Most customers will have had an opportunity to review the product brochure for the model or models the customer is considering buying. All of Suzuki's product brochures, and all of Suzuki's print product advertisements advise the reader of the minimum recommended rider age for the particular model(s) described, the need to use safety equipment, and the toll free telephone number to obtain information about the SVIA rider training courses. Attachments 28 and 29 are copies of a typical Suzuki ATV print ad and product brochure, respectively.

e. Each Suzuki ATV is also shipped with an owner's manual and with a safety information booklet. The dealer is required to give these to each customer who buys an ATV.

Each Suzuki owner's manual contains important safety information. Attachment 30 is an excerpt from the owner's manual for the Suzuki LT50, which is intended for riders age 6 and older. Each Suzuki ATV owner's manual contains an explicit warning about the minimum recommended age of the rider. This warning is in addition to other warnings and important safety information contained in the owner's manual.

"Tips for the ATV Rider/Off-Road Practice Guide" is the safety information booklet shipped with Suzuki's full-sized ATVs. As discussed earlier, the "Tips" portion of this two-part booklet contains a provision in the "Safe Riding Practices" section that states "Don't let youngsters ride full sized ATVs."

"Parents, Youngsters and ATVs" is the safety information booklet shipped with Suzuki ATVs intended for riders under age 14 (Suzuki's 50cc and 80cc models). As discussed earlier, "Parents, Youngsters" includes the following advice in Part I of the booklet:

> It is important that your child always rides an appropriate-sized ATV. Never put your child on a vehicle that requires them to "reach" to put their feet on the footrests or their hands on the handlebars. Some manufacturers [this includes Suzuki] have recommended and/or labeled ATVs for use by certain minimum ages and above. Parents should follow these manufacturers' recommendations.

(3) copies of written corporate policy(ies) with respect to the marketing of ATVs to children under sixteen.

Suzuki has no single document that states its corporate policy with respect to the marketing of ATVs to children under sixteen. Our policy is embodied in the age labeling and other safety-related information described above. The preceding information clearly shows Suzuki's policy of promoting marketing practices designed to help ensure safe use of all ATVs, including ATVs intended for use by children under sixteen.

(4) copies of written corporate policy(ies) with respect to disciplining dealerships and sales representatives who inappropriately market ATVs to children under sixteen, and,

(5) a listing of actions taken by Suzuki to discipline dealerships and/or sales representatives with respect to violations of corporate policy as described in #4 above.

Suzuki has no written policy specifically regarding disciplining of dealerships. Such actions are taken on a case-by-case basis in accordance with the terms of the dealer agreement and applicable state laws.

The minimum recommended operator's age for an adult-sized Suzuki ATV is 14. The minimum recommended operator's age for Suzuki's youth model ATVs is 12 for the 80cc model and 6 for the 50cc model. Suzuki is not aware of any instances where a Suzuki dealer or sales representative has violated Suzuki's policy regarding sale of an ATV for an operator under the recommended minimum age. If, however, you have information to the contrary, we would certainly appreciate hearing of it so we can take appropriate action.

(6) with respect to Mr. Isley's commitment to "redouble our efforts to make sure [inappropriate marketing] does not continue," please describe Suzuki's current and proposed actions in this regard.

As described in item (1) m., above, Suzuki has mailed to Suzuki dealers and will be publishing safety advertisements in ATV industry trade magazines further promoting responsible ATV marketing practices at the dealer level.

In addition, Suzuki is preparing a dealer bulletin to clearly reaffirm Suzuki's policy on this important issue. The bulletin will reemphasize to dealers the importance of matching the ATV to the ATV rider in accord with the rider's skills and the recommended minimum age for the ATV. Suzuki is also considering other possible steps to help ensure appropriate matching of riders with appropriate-sized ATVs.

I trust that the preceding information demonstrates to your satisfaction Suzuki's significant safety efforts, and Suzuki's longstanding and continuing commitment to appropriate ATV marketing practices, particularly for children under age sixteen. Please feel free to contact me if I can provide any additional information.

Sincerely,

John B. Walsh
Corporate Attorney
Manager, Legal Affairs Department

Congress of the United States
House of Representatives
Washington, D.C. 20515

WILLIAM E. DANNEMEYER
39TH DISTRICT, CALIFORNIA

COMMITTEES:
ENERGY AND COMMERCE
JUDICIARY

May 28, 1987

Honorable James J. Florio
Chairman
Subcommittee on Commerce, Consumer Protection and
Competitiveness
H2-151 Annex
Washington, D.C. 20515

Dear Jim:

I am writing in regard to the May 11 hearing on All-Terrain Vehicles (ATVs). I want to thank you for scheduling this hearing which I thought allowed for a balanced and fair airing of the issues relating to ATVs.

In connection with the May 11 hearing, I would like to ask that the enclosed information from U.S. Suzuki be included in the hearing record at the appropriate point. As you know, U.S. Suzuki is located in my Congressional District and has a great interest in this issue. I think this correspondence will be helpful to us as the Subcommittee considers this important issue.

I appreciate your attention to my request.

Sincerely,

Bill Dannemeyer

William E. Dannemeyer
Member of Congress

WED:jb

WASHINGTON OFFICE: 1214 LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515 (202) 225-4111
DISTRICT OFFICE: 1235 NORTH HARBOR BOULEVARD, SUITE 100, FULLERTON, CA 92632 (714) 992-0141

SUZUKI

U.S. SUZUKI MOTOR CORP.
P.O. BOX 1100, 3251 EAST IMPERIAL HIGHWAY, BREA, CA 92621-6722

TEL. (714) 996-7040 TELEX 68-3348 FAX (714) 970-6005 CABLE ADDRESS "COLLEDA"

April 27, 1987

Terrence M. Scanlon
Chairman
Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, MD 20207

Subject: Response to Letter of February 18
Regarding ATVs for Children Under Age 12

Dear Chairman Scanlon:

This letter is in response to your letter of February 18, 1987, requesting that U.S. Suzuki Motor Corporation ("Suzuki") voluntarily cease marketing ATVs intended for use by children under 12 years of age. Suzuki has carefully studied your request and, based on information available to us, we must respectfully decline your request.

Suzuki distributes a small, slow, lightweight ATV intended for use by children under age 12. The model is the LT50. The LT50 has an engine displacement of 50 cubic centimeters (cc) and an unrestricted top speed of approximately 12.5 miles per hour. As distributed, the LT50 has its speed limiter set to a maximum speed of 7 to 8 miles per hour.

Suzuki has sold over 55,000 50cc ATVs intended for use by children under age 12 since 1982. We are aware of only three minor injury accidents out of this entire population of vehicles. This is certainly an excellent safety record.

You requested that Suzuki voluntarily cease marketing ATVs intended for use by children under age 12 based upon:

- -- the reports of medical experts
- -- the reports of human factors experts

Our review of the reports of the medical and human factors experts shows that these reports do not support your request that Suzuki voluntarily cease marketing ATVs intended for use by children under age 12.

Your letter stated that the medical experts made a recommendation based on clinical analyses of ATV accidents that ATVs specifically designed for children under age 12 should be removed from the consumer market. This statement is not supported by the facts. The Franklin Research Center report openly admits that Franklin "...automatically assigned to any operator who was less than twelve years old" the causative factor "lacked independent judgment (child)."1/ This is not clinical analysis, this is a simple, unsupported assertion.

Your letter also stated that the human factors experts concluded that, typically, children under age 12 do not have the motor, perceptual, and cognitive skills to safely drive an ATV of any size. This conclusion, in fact, is not supported by the human factors report. A fair reading of the Essex Corporation report2/ leads to the conclusion that children under age 12 may not have motor, perceptual, and cognitive skills which have developed to adult levels. Nowhere does the report assess what level of these skills are required to operate ATVs intended for use by children under age 12, and nowhere does the report indicate that adult skill levels are required in order to operate an ATV intended for use by children under age 12.

As an everyday experience children under 12 ride bicycles, ski, use skateboards, and roller skate. Children are accomplished at these tasks, many of which are more complex than riding an ATV intended for use by children under age 12, even though these children's skills may not have developed to adult levels.3/ This demonstrates that adult level skills are not required for many complex tasks.

Thus, the medical and human factors reports do not support the statements made in your letter. If, for the sake of analysis, we assume that these reports were accurate, we

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1/ Franklin Research Center, Final Report: Medical Analysis of ATV Injuries, Sept. 19, 1986, page 50 (emphasis added).

2/ Essex Corporation, All Terrain Vehicle (ATV) Human Factor Analysis, Sept. 11, 1986.

3/ Indeed, a youngster riding a bicycle in a traffic environment must simultaneously maintain balance and control of a single track vehicle while scanning the road and surrounding traffic, identifying potential hazards, predicting the path of various vehicles and outcome of their potential maneuvers, deciding upon the optimum path of travel for the bicycle based on these factors, and executing the decision.

would expect to see large numbers of accidents involving children under age 12 on ATVs intended for use by such children. This is clearly not the case. Out of all the accident data gathered by the CPSC, only 4 accidents involve children under age 12 on an ATV intended for use by children under age 12. This fact alone shows the inaccuracy of the medical and human factors reports. It also shows that children under age 12 are indeed capable of safely operating ATVs that are designed with special features and characteristics making the machines suitable for these children.

As you are aware, the Suzuki LT50 is specifically designed for use by children under age 12. Consequently, the LT50 has special design features, operating characteristics, and safety information appropriate for this vehicle. Riding an LT50 is not simply a miniaturized version of riding an adult-sized ATV. Riding an LT50 is a different riding experience. The LT50 has a much lower acceleration rate than larger ATVs. This is true regardless of the setting of the LT50's throttle limiter. The LT50 has a lower ground clearance than larger ATVs. This has the practical effect of keeping the LT50 from being used in very rough areas because use in such areas would result in the LT50 grounding on surface features.

The LT50 has simplified controls so that young riders have a simpler riding task than riders of large ATVs. The LT50 and its controls are appropriately sized for the young rider. Instructions in the owner's manual and other literature supplied with the vehicle are appropriate for adults to use in teaching and supervising use of an ATV intended for use by children under age 12.

Suzuki shares the Commission's desire to reduce ATV-related accidents and injuries to children under age 12. Eliminating ATVs intended for use by such children, however, is not a solution. Of all the ATV-related injuries to children under age 12, about 96% occur on ATVs intended for older children and adults. Indeed, over 70% of the injuries to children under age 12 involve ATVs intended for use by riders 14 years of age and older.

The key to reducing injuries to children under age 12, then, clearly is to keep them off of the larger vehicles, whether as operators or passengers. We need to increase our efforts at preventing parents from carrying children as passengers on ATVs, and from letting their children ride as passengers. Suzuki is doing this through increased dealer and owner information materials, and through the support of the model legislation and other safety efforts of the Specialty Vehicle Institute of America (SVIA). We also need to work to ensure that young riders are operating ATVs appropriate to their size and skill. To this end, it is important if not essential to ensure the continued availability of small, lightweight, slow ATVs intended for use by children under age 12 so that these riders are not forced onto larger vehicles and thus exposed to greater risk.

Although we cannot agree to your request to discontinue marketing our 50cc ATV, Suzuki wishes to emphasize most strongly our concern over child safety. Notwithstanding the outstanding safety record of the LT50 and Suzuki's continuing efforts to maintain that record, we stand ready to work with you, the other Commissioners, and the CPSC staff toward constructively exploring and developing a sound, mutually acceptable program, through the voluntary standard process or other approaches. Toward this end, I would respectfully request that you afford Suzuki representatives the opportunity to discuss this matter further with you.

A more detailed analysis of the issues behind Suzuki's position on this matter is enclosed.

Sincerely,

M. Tani

M. Tani
President

MT:bf

Enclosure

cc: Vice Chairman Anne Graham
    Commissioner Carol G. Dawson

Response of U.S. Suzuki Motor Corporation ("Suzuki") To Chairman Scanlon's February 18, 1987 Letter on Marketing of ATVs Intended for Children Under Twelve

Suzuki submits this response to Chairman Scanlon's February 18, 1987 letter requesting "all pertinent facts" relating to marketing of ATVs intended for use by children under twelve. Suzuki currently markets a 50 cc ATV, the LT50, which is a four-wheel ATV specifically recommended and age-labelled for children six and above. The LT50 currently retails for about $800 per unit.

For the reasons set forth below, Suzuki regards its LT50 as a highly safe children's product and therefore plans to continue marketing this product.

I. The Suzuki LT50 Is Especially Designed for the Safety of the Young Rider

The LT50 is specifically designed and engineered to be safe for the young operator. The model is small in size, with a very low center of gravity, to match the small size of the youngsters for whom it is intended. Thus, both the dimensions and weight of the 50 cc ATV are substantially less than larger ATVs intended for older youths or for adults. Also, the vehicle is equipped with simplified controls -- a single brake lever, a single throttle control, and one forward gear with no clutch so that no shifting is required -- to minimize the driving task of the young rider. The LT50 also has a low ground clearance which effectively prevents the ATV from being used in very rough areas because the ATV would not clear the surface features. The vehicle is also equipped with extra shielding to help prevent heat and mechanical injuries.

Perhaps the most significant safety-design features of the LT50 ATVs are their low maximum speed and their additional speed reduction devices. The small, 50 cc engine size (the smallest of any ATV) is intended to provide very limited operating power and a much lower acceleration rate than larger ATVs. Moreover, the vehicle is delivered to the purchaser with a speed limiter installed to reduce maximum vehicle speed to about 7-8 miles per hour. The speed limiter can be adjusted to increase gradually the maximum speed, but this requires the use of hand tools. This very low-speed configuration is especially well suited for allowing the child to familiarize himself or herself with the vehicle. With the speed limiter removed, the Suzuki LT50 is capable of maximum speeds of only 12.5 mph, a speed easily and regularly exceeded by children riding bicycles.

The LT50 is also equipped with a tether-operated engine stop switch. This allows a supervising adult to stop the ATV at any time merely by pulling on the tether. This engine-stop tether is an excellent device for use when the child is first becoming familiar with the vehicle. Also, because the tether can be easily removed, rendering the engine inoperable, a parent can use the tether as a locking device to prevent unauthorized or unsupervised operation of the vehicle.

The LT50 ATVs respond to a need felt by parents for appropriately sized ATVs for their children. In addition to allowing children six and older to learn safely about ATV riding, these vehicles allow children to accompany their ATV-riding parents on family outings and other activities, which is a major aspect of ATV use in the U.S. The superior safety record achieved by Suzuki's 50 cc ATVs suggests strongly that parents do in fact assure that they are used in ways appropriate to individual children's sizes and capabilities.

It should be evident from the above that the LT50 is designed and built with safety as a paramount concern. The CPSC staff itself has recognized 50-60 cc ATVs as a "special class" of ATVs which have speed and size features different than "typical ATVs."[1] As is discussed subsequently herein, the exceptional safety record of the Suzuki 50 cc ATVs is the strongest confirmation of the success of the safety-oriented design and construction of these vehicles.

II. Suzuki Provides Parents with Comprehensive Safety Warnings and Instructions Regarding Use of the LT50

The Commission has voiced concerns generally that purchasers of ATVs are provided inadequate safety warnings and instructions for ATV use. Suzuki believes the materials it provides LT50 purchasers provide clear and ample warnings and instructions for safe use of this product.

In addition to the warning labels affixed to the LT50 and the safety hangtag that is clearly displayed on the vehicle at the dealership (copies of which are attached as Appendices A and B, respectively), the LT50 owner's manual (pertinent pages of which are attached hereto as Appendix C), contains explicit and comprehensive safety warnings and instructions aimed particularly at parents' responsibilities in supervising young riders. For example, under the heading IMPORTANT NOTICE TO PARENTS, page 2 of the manual contains the following bold-face warning:

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[1] Contract No. CPSC-C-86-1192, page 8.

> **WARNING**
>
> Proper parental supervision and instruction are necessary for safe and proper operation of this LT50 by young riders.

Likewise, page 2 contains the following highly specific, bold-face message:

> **WARNING:**
>
> - Even though the LT50 has four wheels, it can tip over in any direction. Improper turning techniques, traversing hills, accelerating on hills, and turning on hills can all lead to vehicle tip over. Learn proper riding techniques and avoid riding situations which can lead to trip [sic] over accidents.
> - The LT50 and other all-terrain vehicles (ATVs) have unique handling characteristics. ATVs handle differently than motorcycles. Although ATVs have four (or three) wheels, they handle differently than automobiles, too. ATVs require special riding techniques suited to their handling characteristics, so be sure that all riders of the LT50 practice and master the riding techniques described in this owner's manual (Starting on page 21). ATVs can rollover if proper riding techniques are not used or if proper precautions are not used when riding.

The owner's manual contains subsequent, detailed instructions to the parent regarding safe riding and related operational requirements.

In addition to the safety materials that accompany the LT50, Suzuki provides all new LT50 purchasers and has provided all past 50 cc purchasers with the booklet, Parents, Youngsters and ATVs, which is specifically designed to provide warnings and instructions for parents and for parents to share with young ATV operators (Suzuki's safety letter accompanying this booklet is attached hereto as Appendix D).

As the above discussion indicates, Suzuki believes that dissemination of appropriate warning and instructional information to parents is an essential part of the safe riding experience and, coupled with the safety-oriented design and construction of the LT50, helps ensure that the LT50 is in fact operated safely.

III. The CPSC and Industry Accident Data Reveal an Extremely Low Number and Low Rate of Accidents Involving 50 cc ATVs

Suzuki is aware of only three minor injury accidents out of more than 55,000 50 cc ATVs which the company has sold since 1982, when it began selling these vehicles. This outstanding safety record is documented as well in the CPSC's own data. The CPSC's hazard analysis identified a total of only three accidents involving 50-60 cc ATVs, none of which involved the LT50.[2/] These figures document the virtual absence of risk involved with these products.

The Directorate for Economic Analysis, which undertook the agency's risk assessment, opposed restrictions on marketing 50-60 cc ATVs because its risk assessment did not support such action.[3/] This conclusion of the Economic Analysis Directorate was the subject of considerable discussion at the staff's November 19-20 briefing to the Commission, at which time the staff reiterated the absence of significant injury numbers and rates on the 50-60 cc ATVs.[4/]

The conclusion and position of Economic Analysis are additionally significant because the hazard and risk analyses actually included 50-60 cc ATVs in the same category as ATVs up to 90 cc in size, thereby creating a higher risk figure because of the substantially greater numbers of accidents that have been associated with these larger ATVs. Neither the

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[2/] See Freedom of Information Act response from Priscilla Martinez, CPSC, to Paul M. Laurenza, Dec. 12, 1986.

[3/] See Memorandum from Gregory B. Rodgers to Nicholas V. Marchica, "Preliminary Description of the Costs and Benefits of the ATV Task Force Recommendations," 25 Sept. 1986.

[4/] See Transcript of All-Terrain Vehicle Task Force Briefing (hereinafter Transcript), November 19-20, 1986, Vol. II, pages 22-23, 150.

Economic Analysis risk assessment nor the Directorate for Epidemiology hazard analysis, which was the basis for the risk assessment, segregated out 50-60 cc models.[5] Therefore, even using inflated risk figures, Economic Analysis recommended against any restriction on marketing of ATVs for children under twelve.[6] That recommendation would necessarily be all the stronger, of course, with respect to the LT50 because that vehicle was involved in no accidents in the hazard analysis.[7]

The real-world accident data thus demonstrate that the LT50 ATVs are exceptionally safe products. The virtual absence of accidents, compared to the tens of thousands of vehicles in use, in itself belies any claim that operation of the LT50 involves any significant risk, much less an unreasonable risk. Moreover, it is enlightening to compare the virtual absence of LT50 accidents with the numbers of accidents occurring on other motion-related children's products. According to the CPSC's data for calendar year 1985, the following estimated numbers of children under 15 were treated for injuries in hospital emergency rooms: bicycles (390,000 injuries); roller skates (46,000); sleds (24,000); skateboards (25,000).[a] While Suzuki recognizes that the universe numbers associated with these products may differ widely, one cannot escape the conclusion that commonly accepted motion-related children's products individually cause tens of thousands of injuries to children annually. When one considers, then, the virtual absence of injuries on the Suzuki LT50, the outstanding safety record of these products becomes even more dramatically evident.

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[5] See, e.g., Transcript (Vol. II), page 31.

[6] See Transcript (Vol. II) at 150. In order to quantify the minimal risk associated with children riding all 50-60 cc models, Suzuki requested the CPSC to do a hazard analysis and risk analysis specifically for these vehicles. See Letter to Chairman Terrence B. Scanlon from John B. Walsh, Feb. 13, 1987. We have not yet received any response to this request.

[7] Suzuki estimates that its 50 cc ATVs constitute slightly more than two percent of the total ATV vehicle population. It might be expected, then, that fatalities involving these ATVs would constitute slightly more than two percent of the total number of ATV-related fatalities. In fact, according to CPSC's fatality data the fatality rate on the Suzuki 50 cc ATVs is zero.

The CPSC staff report and testimony, as well as Chairman Scanlon's letter of February 18, 1987, indicate that the bases for requesting cessation of marketing ATVs intended for children under twelve are the human factors and medical reports, which were prepared, respectively, by Essex Corporation and Franklin Research Center, two independent contractors retained by the CPSC in connection with the ATV Task Force study. As explained below, however, these contractors' reports provide no support for cessation of marketing the LT50.

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[a] U.S. Consumer Product Safety Commission, Toy Safety Questions and Answers, Nov. 1986. At the height of skateboard popularity in the U.S., the CPSC reported more than 100,000 hospital-treated injuries annually on these products, including more than 3,000 injuries per week during peak seasonal use. See CPSC Hazard Analysis Report on Skateboards (1978).

IV. The Human Factors and Medical Reports Do Not Support Cessation of Marketing the Suzuki LT50

A. The Essex Corporation Human Factors Report

The Essex Corporation report[1] constitutes primarily a review of various academic studies regarding the development of children in four areas: anthropometric characteristics (*i.e.*, size and strength), perceptual abilities, motor skills and cognitive abilities. Based on published studies regarding children's size and strength at various ages and based on measurements made of ATV dimensions, the report recognized that the average child in the six to eleven year age group *could* physically handle 50-60 cc and even larger ATVs. It also concluded that, according to the literature reviewed, children's perceptual, motor and cognitive abilities develop at different rates and that at about the age of twelve children's capabilities in these areas "stabilize", i.e., reach near-adult levels. Because children younger than twelve have not reached near-adult levels of capabilities in these areas, the report recommends that children under twelve should not ride ATVs.

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[1] Essex Corporation, *All Terrain Vehicle (ATV) Human Factor Analysis*, Sept. 11, 1986 (hereinafter "Essex Report").

The Essex Report did not conclude that 50 (or 60) cc ATVs pose unreasonable risks or hazards to six to eleven year old children. The report did not assert that conclusion, but instead simply made a recommendation based on a conservative, unsubstantiated preference that children under twelve not ride ATVs.

Second, even if the report had stated a conclusion that 50 cc ATVs constitute unreasonable risks or hazards for children under twelve, the report contains no plausible basis for such a conclusion. The report never considers what minimum level of particular skills and other conditions are necessary to operate a 50 cc ATV safely. Thus the Report provides no basis for saying that children six to eleven years old are lacking the skills necessary to operate these particular products safely. Of course, as noted above, the report does not purport to reach this conclusion, but only to recommend that children under twelve not ride ATVs because they have not reached near-adult levels of capabilities in some areas.

The report also fails to consider a number of highly relevant factors that must be considered in any credible evaluation of the safety of children riding 50 cc ATVs:

A. The report made no attempt to understand the particular products' design, engineering and performance characteristics and how such factors would relate to children's operation of the vehicles; despite the contract's instruction to consider the special speed-limiting characteristics of the smallest ATVs,[10] the report simply ignored the fact that 50 cc ATVs are delivered with a speed capability of only 7-8 mph, which may be adjusted by a supervising adult to match the skill of the rider;

B. The contractor never observed children actually operating 50 cc ATVs;

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[10] Contract No. CPSC-C-86-1192, page 8 (hereinafter Essex Contract). Although the contractor attempted to undertake a crude evaluation of the vehicles' overall design by measuring the vehicles' dimensions, this simplistic effort was carried out improperly. For example, the report cites a Suzuki 85 cc three-wheel vehicle with certain specified controls. Essex Report at Table A-1. None of the ATV distributors sells the vehicle described nor any similarly configured vehicle.

C. The contractor did not consider the real-world safety record of 50 cc ATVs as reflected in the extremely low incidence of accidents (and the absence of accidents in the hazard analysis specifically involving the LT50);

D. The contractor did not attempt to assess the importance or effect of the explicit, comprehensive safety instructions provided to parents in the LT50 owner's manuals;

E. The contractor never considered that children six to eleven regularly ride bicycles, skateboards, roller skates and skis, products requiring skills in some respects similar to and equally if not more complex than those required in operating 50 cc ATVs; and

F. The report never acknowledged technical literature indicating that children can enhance their skills in operating items such as 50 cc ATVs through actual experience.

The analytical flaws and omissions in the Essex Report are compounded by the contractor's total failure to attempt to verify its hypotheses in the real world. The contractor ignored the real-world accident data, made no attempt to undertake even the simplest type of real-world analysis -- for example, observing children riding 50 cc ATVs -- nor made any other effort to correlate its literature-based hypotheses with the real-world performance of the product.

B. The Franklin Research Center's Medical Analysis

The CPSC contracted with Franklin to "provide the Medical Director with technically sound, clinical analyses of ATV injuries/deaths which may be used to support CPSC recommended revisions to the voluntary standard now being developed by SVIA." The contractor was to provide medical analysis of ATV-associated injuries and deaths as well as a "specification of causal factors."[11]

The relevance of the Franklin Research Center report[12] to the specific issue of the safety of 50 cc ATVs is questionable at best. The Franklin Report analyzes 424 accidents selected by the CPSC staff. The accidents do not constitute a random sample. The report finds that 71 of the 424 accidents involve operators under the age of twelve.[13]

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[11] Contract No. CPSC-C-86-1199, page 6.

[12] Franklin Research Center, Final Report: Medical Analysis of ATV Injuries, Sept. 19, 1986 (hereinafter "Franklin Report").

[13] Franklin Report, page 50.

The report also very briefly refers to literature on child development and concludes that children under twelve have slower perception/decision/reaction times than adults and exhibit a decision-making process less complete than adults.[14] Based on these two points, the report recommends that no child under twelve should operate ATVs and that all ATVs under 100 cc should be removed from the market.

With respect to 50 cc ATVs, this recommendation is unsupportable. The accident statistics described by the report are completely misleading; the report does not focus on the question: on what size ATVs are children getting hurt? It never indicates how many of the 424 accidents occurred on 50 cc ATVs. In fact, a review of the underlying accident reports shows that only one, minor injury accident of the 424 accidents studied by Franklin involved a 50 cc ATV. Thus, at the very outset it may be questioned how any valid conclusions can be arrived at regarding 50 cc ATVs, in particular the LT50, when the contractor did not analytically segregate out these products from larger vehicles intended for a different age group (*i.e.*, children twelve and above) and when the accident grouping for the 50 cc ATVs consisted of a single accident.

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[14] Franklin Report, page 52.

Moreover, although the Franklin Report summarily dismisses the issue of mismatch of ATV size and operator,[15] an objective review of the statistics makes clear this is the critical issue. *Sixty-eight of the seventy-one* accidents involving operators under twelve occurred on ATVs 70 cc and above, *i.e.*, on ATVs larger than those the industry recommends for children under twelve,[16] and more than seventy percent of the accidents involving operators under twelve occurred on ATVs of 100 cc or larger, *i.e.*, those recommended for persons fourteen and older.

Additionally, the Franklin Report fails to examine the engineering, design or performance characteristics of 50 cc ATVs. While it discusses children's purportedly slower reaction times, the report gives no recognition to the small size, simplified controls and substantially slower speeds built into the 50 cc models designed for children six and older. Thus it makes no evaluation whether children under twelve have skills appropriate to the 50 cc models.

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[15] Franklin Report, pages 58-60.

[16] The closest the Franklin Report ever comes to a review of the size of the ATVs involved in accidents is a breakdown showing the number of accidents on "small" ATVs. Franklin Report, page 8. However, the report includes in this group not only 50-60 cc ATVs but also 70-80-90 cc ATVs, which are larger and faster ATVs recommended for operators twelve and over.

Further, the Franklin Report openly declares that it "automatically assigned to any operator who was less than twelve years old" the accident causative factor "lacked independent judgment (child)."[17] The report makes clear that this arbitrary causation assignment resulted not from any examination of the specifics of accident scenarios involving 50 cc ATVs, but from a review of developmental literature and the number of children injured on ATVs recommended for older youths or for adults.

The Franklin Report thus provides no defensible basis for any finding regarding the safety of 50 cc ATVs. It does not go beyond the literature-review approach to child development issues, never addressing the question of what skills are necessary or desirable for the 50 cc ATVs. And although the report is primarily directed to real-world accident experience, it does not address the record of safe performance of the 50 cc ATVs. It merely lumps these vehicles and the single accident involving them into a group with larger, more powerful ATVs not designed for children under twelve.

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[17] Franklin Report, page 50 (emphasis added).

V. The Real-World Accident Data Refute the Human Factors/Medical Analysis Regarding 50 cc ATVs

The foregoing discussion points out some of the major inadequacies of the Essex and Franklin reports as they pertain to the subject of 50 cc ATVs. Each report made unfounded analytical assumptions regarding both the products and their intended operators and then proceeded to make quantum leaps to specific conclusions and recommendations regarding the ability of children under twelve to operate ATVs intended for their use. Neither the contractors nor the staff made any attempt to confirm or validate the findings or recommendations of the reports.

Moreover, if the conclusions of the reports were accurate to the slightest extent, presumably there would be a substantial number of accidents involving children under twelve on 50 cc ATVs. Yet, as discussed at length above, the real-world evidence is overwhelmingly to the contrary.

At no point, however, did the Commission staff or the contractors attempt to explain the glaring inconsistency between the contractors' hypotheses and the evidence of the real-world safety of 50 cc ATVs. The staff, both in its report and in the staff briefing, recognized the conflict between the real-world accident data and the contractors' reports, but without explanation simply chose to accept the latter.

In cases arising under the CPSA, the courts have not hesitated to reject unverified, untested "expert opinion" evidence, particularly where the opinion relied on assumptions or hypotheses. See, e.g., Aqua Slide 'N' Dive Corp. v. CPSC, 569 F.2d 831 (5th Cir. 1978). The need for substantiated "expert opinion" evidence to support remedial action is perforce all the more essential where the risk of injury is remote. Id. In any event, when one considers the enormous expenditure of time and effort by the CPSC to study ATVs, the total absence of any attempt to explain the massive contradiction between the contractors' recommendations and the real-world safety performance record regarding 50 cc ATVs should give the Commission the most serious doubts about the under twelve-year age recommendation of the contractors' reports.

VI. Eliminating or Curtailing the Availability of 50 cc ATVs Will Increase the Risk to the Public

In the CPSC staff report and in testimony at the November 19-20 staff briefing, the staff indicated that curtailing the availability of 50-60 cc ATVs may very well increase the risk to children under twelve by encouraging that group to ride larger ATVs not designed or intended for their use. The Directorate for Economic Analysis concluded that children riding such larger ATVs would face a substantially greater risk of injury than that associated with the smaller ATVs.[18] And Commissioner Dawson's dissent regarding 50-60 cc ATVs expressed specific concern over the likelihood of increased risk to children if smaller ATVs were unavailable.[19]

There was no dispute among the staff regarding the likelihood of increased risk associated with curtailing availability of the 50-60 cc ATVs. In fact, David Schmeltzer, the Associate Executive Director for Compliance and Administrative Litigation and the most vocal staff critic of ATVs generally, succinctly characterized such action as "driving children to the larger, more powerful ATVs."[20] Considering that the staff has found that approximately 70 percent of the children under twelve riding ATVs already ride the larger models,[21] the likelihood of even greater numbers of children riding such vehicles if the 50-60 cc models are curtailed seems self-evident.

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[18] Transcript (Vol. II), pages 23-24.

[19] Video Transcript of December 18 CPSC Meeting.

[20] Transcript (Vol. II), page 192.

The importance of the potential for increased risk as a result of action against 50-60 cc ATVs can hardly be overstated. Given the undisputed, negligible risk that exists to children under twelve on these models, virtually any shift among such children to riding larger ATVs, where they are clearly at greater risk, will result in an overall increase in risk.[22]

VII. Cessation of Marketing a Product is In Effect a Total Ban of That Product and Should be Undertaken Only Under the Most Severe Circumstances

As discussed above, there is no reasonable justification for a voluntary halt to sales of a product as demonstrably safe as the LT50. The Commission's February 18 letter requests a voluntary cessation of marketing, but because the practical effect of the Commission's request would be the same as a mandatory ban on the sale of the LT50, Suzuki believes the statutory requirements for a banning rule should be fully recognized in assessing this matter.

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[21] Memorandum from Gregory B. Rodgers to Nicholas V. Marchica, "Preliminary Description of the Costs and Benefits of the ATV Task Force Recommendations," Sept. 25, 1986, page 2.

[22] The Commission itself has recognized this type of problem in the recent past. In 1979 the CPSC received a rulemaking petition which sought, among other things, to restrict use of minibikes and other off-road two-wheeled motorized vehicles to the average-sized 14 year-old. Among the Commission's reasons for denying the petition was that "injuries to riders of vehicles that are too large for them to handle might increase." 44 Fed. Reg. 69982 (1979).

Under both the provisions of the CPSA, 15 U.S.C. §§ 2057-58, and those of the Federal Hazardous Substances Act, 15 U.S.C. § 1262, the Commission is required to follow stringent procedures and to make critical substantive determinations before any final rule banning a product may be promulgated. In addition to complying with a multi-step process which includes cost/benefit analyses, the Commission must, among other things, determine substantively that the requisite hazard exists and that the regulation is the least burdensome means of addressing that risk.[23]

A ban, of course, is the most drastic regulatory imposition upon both the public and the product's manufacturers and sellers and thus should not be imposed except where an unsafe product cannot reasonably be made safe. Where, as here, there is only a negligible risk to begin with, surely the means employed to address such risk should -- and statutorily must -- be far less severe than an outright ban on the product.

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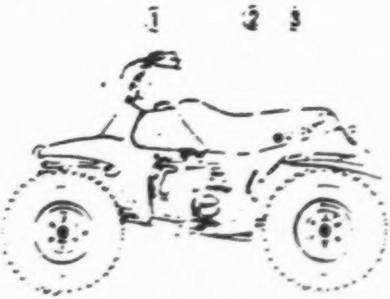
[23] A ban typically reduces risk by eliminating new sales. However, where the risk is minimal, and further where the possibility exists that eliminating a product could increase risk, a ban is both unjustified legally and is potentially counterproductive.

If there is any legitimate basis upon which to regulate products with a safety record as outstanding as that of the LT50, a host of other measures are available -- through the regulatory process or through voluntary efforts in conjunction with that process. For example, improvements in labeling and warnings, performance criteria, and/or training would be far more appropriate and justifiable objectives than a ban. Most of these efforts have been implemented, or are already in progress. In addition to its own efforts, Suzuki will consider any or all measures in cooperation with the Commission to ensure the safest reasonable use of the LT50.

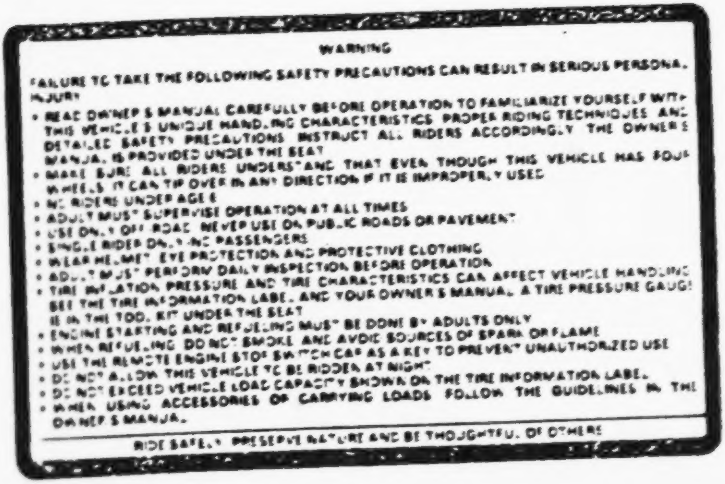
Appendix A

LOCATION OF LABELS



1

SET PARKING BRAKE BEFORE STARTING ENGINE

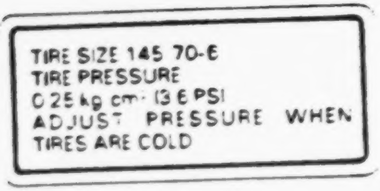


WARNING

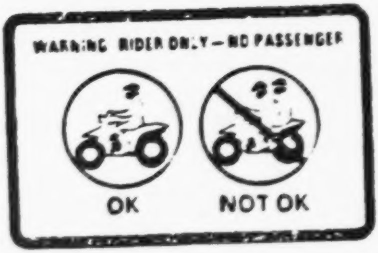
FAILURE TO TAKE THE FOLLOWING SAFETY PRECAUTIONS CAN RESULT IN SERIOUS PERSONAL INJURY

- READ OWNER'S MANUAL CAREFULLY BEFORE OPERATION TO FAMILIARIZE YOURSELF WITH THIS VEHICLE'S UNIQUE HANDLING CHARACTERISTICS, PROPER RIDING TECHNIQUES AND DETAILED SAFETY PRECAUTIONS. INSTRUCT ALL RIDERS ACCORDINGLY. THE OWNER'S MANUAL IS PROVIDED UNDER THE SEAT.
- MAKE SURE ALL RIDERS UNDERSTAND THAT EVEN THOUGH THIS VEHICLE HAS FOUR WHEELS, IT CAN TIP OVER IN ANY DIRECTION IF IT IS IMPROPERLY USED.
- NO RIDERS UNDER AGE 6
- ADULT MUST SUPERVISE OPERATION AT ALL TIMES
- USE ONLY OFF-ROAD. NEVER USE ON PUBLIC ROADS OR PAVEMENT.
- SINGLE RIDER ONLY – NO PASSENGERS
- WEAR HELMET, EYE PROTECTION AND PROTECTIVE CLOTHING
- ADULT MUST PERFORM DAILY INSPECTION BEFORE OPERATION
- TIRE INFLATION PRESSURE AND TIRE CHARACTERISTICS CAN AFFECT VEHICLE HANDLING. SEE THE TIRE INFORMATION LABEL AND YOUR OWNER'S MANUAL. A TIRE PRESSURE GAUGE IS IN THE TOOL KIT UNDER THE SEAT.
- ENGINE STARTING AND REFUELING MUST BE DONE BY ADULTS ONLY
- WHEN REFUELING, DO NOT SMOKE AND AVOID SOURCES OF SPARK OR FLAME
- USE THE REMOTE ENGINE STOP SWITCH CAP AS A KEY TO PREVENT UNAUTHORIZED USE
- DO NOT ALLOW THIS VEHICLE TO BE RIDDEN AT NIGHT
- DO NOT EXCEED VEHICLE LOAD CAPACITY SHOWN ON THE TIRE INFORMATION LABEL
- WHEN USING ACCESSORIES OR CARRYING LOADS, FOLLOW THE GUIDELINES IN THE OWNER'S MANUAL.

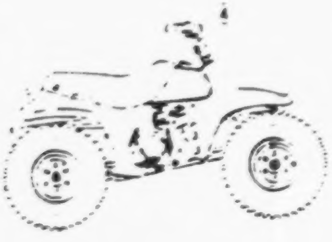
RIDE SAFELY, PRESERVE NATURE AND BE THOUGHTFUL OF OTHERS



TIRE SIZE 145/70-6
TIRE PRESSURE
0.25 kg/cm² (3.6 PSI)
ADJUST PRESSURE WHEN
TIRES ARE COLD

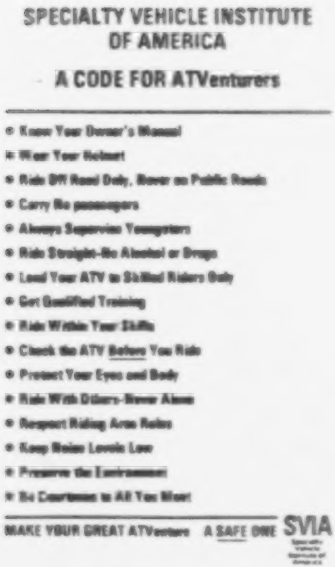


WARNING: RIDER ONLY — NO PASSENGER



61

Appendix B

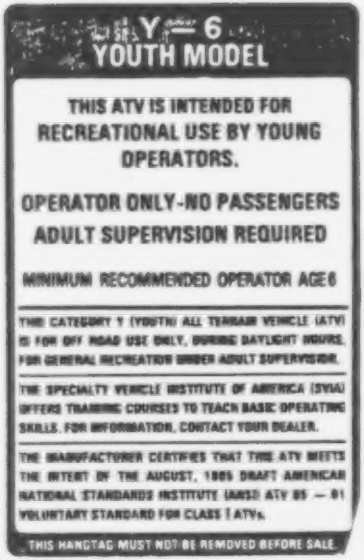


SPECIALTY VEHICLE INSTITUTE OF AMERICA

A CODE FOR ATVenturers

- Know Your Owner's Manual
- Wear Your Helmet
- Ride Off Road Only, Never on Public Roads
- Carry No passengers
- Always Supervise Youngsters
- Ride Straight-No Alcohol or Drugs
- Lend Your ATV to Skilled Riders Only
- Get Qualified Training
- Ride Within Your Skills
- Check the ATV Before You Ride
- Protect Your Eyes and Body
- Ride With Others-Never Alone
- Respect Riding Area Rules
- Keep Noise Levels Low
- Preserve the Environment
- Be Courteous to All You Meet

MAKE YOUR GREAT ATVenture A SAFE ONE



Y — 6

YOUTH MODEL

THIS ATV IS INTENDED FOR RECREATIONAL USE BY YOUNG OPERATORS.

OPERATOR ONLY-NO PASSENGERS

ADULT SUPERVISION REQUIRED

MINIMUM RECOMMENDED OPERATOR AGE 6

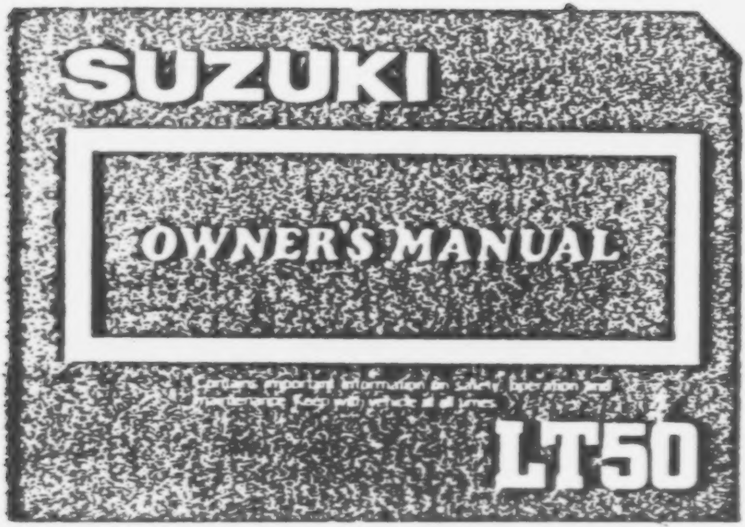
THE CATEGORY Y (YOUTH) ALL TERRAIN VEHICLE (ATV) IS FOR OFF ROAD USE ONLY, DURING DAYLIGHT HOURS, FOR GENERAL RECREATION UNDER ADULT SUPERVISION.

THE SPECIALTY VEHICLE INSTITUTE OF AMERICA (SVIA) OFFERS TRAINING COURSES TO TEACH BASIC OPERATING SKILLS. FOR INFORMATION, CONTACT YOUR DEALER.

THE MANUFACTURER CERTIFIES THAT THIS ATV MEETS THE INTENT OF THE AUGUST, 1985 DRAFT AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) ATV 85 — 01 VOLUNTARY STANDARD FOR CLASS I ATVs.

THIS HANGTAG MUST NOT BE REMOVED BEFORE SALE

Appendix C



SUZUKI

OWNER'S MANUAL

Contains important information on safety, operation and maintenance. Keep with vehicle at all times.

LT50

(NOTE: The text of this owner's manual has been retained in subcommittee files.)

Appendix D

SUZUKI

U.S. SUZUKI MOTOR CORPORATION

- ATV SAFETY INFORMATION -
PLEASE READ CAREFULLY

Dear Suzuki ATV Owner:

A safe ride on your Suzuki ATV is a fun ride. We at Suzuki would like your youngster to enjoy his or her ATV safely, so we would like to share some important safety tips with you.

We have received reports of accidents that could have been avoided if only the ATV riders and their parents had used a little care. The following are some precautions that you can take to help make sure every ride is safe as well as fun for your youngster.

1. Read your owner's manual and the ATV's labels and review them with your youngster. Follow the warnings and tips that you read. Your owner's manual and ATV's labels contain many of the precautions discussed below.

2. Make sure that youngsters only ride an ATV that is the correct size for them. No youngster under age 6 should ride the 50cc Suzuki ATV.

3. Always supervise youngsters. Never allow them to ride alone. Young riders need adult guidance. Be sure you are around to remind youngsters of safe riding habits.

4. Always have your young rider wear a helmet and other protective apparel. The severity of many accidents could have been lessened dramatically if only the rider had been wearing protective apparel.

5. Never allow your youngster to carry a passenger. All ATVs are designed to carry the rider only.

6. Never lend your ATV to an inexperienced rider. Many accidents occur because the borrower is not familiar with ATV riding and exceeds his capabilities.

7. Never allow your youngster to operate the ATV on paved surfaces. ATVs are not designed for this kind of use. It can be very difficult to turn an ATV on a paved surface. ATVs are for off road use only.

8. Get qualified training for yourself and your youngster, as outlined below.

We have enclosed for your use our recently-published booklet entitled "Parents, Youngsters, and ATVs". This booklet contains some very helpful suggestions for a safe ride, and provides exercises for your child to practice to become a more skilled rider. We hope you will read through this booklet with your child carefully. The exercises in the booklet are also useful in showing new riders how to ride an ATV.

The Specialty Vehicle Institute of America (SVIA) has an excellent Rider's Course that is available nationwide. We encourage you, your youngster, and any ATV riders you know to take this course to improve your skills and safe riding habits. This course is also an excellent way for new riders to learn the correct and safe riding methods. For additional safety information and information about the SVIA's Rider's Course nearest you, contact your local Suzuki dealer or call the SVIA, toll free, 1-800-447-4700.

Thank you for your support in our efforts to promote a "Safety First" attitude in ATV riding.

Sincerely,

U.S. SUZUKI MOTOR CORP.

Z103

SUZUKI

U.S. SUZUKI MOTOR CORP.
P.O. BOX 1100, 3251 EAST IMPERIAL HIGHWAY, BREA, CA 92621-6722

TEL (714) 996-7040 TELEX 68-3348 FAX (714) 970-6005 CABLE ADDRESS "COLLEDA"

April 29, 1987

HAND DELIVERED

Terrence M. Scanlon
Chairman
U.S. Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207

Subject: Draft CPSC Safety Alert

Dear Chairman Scanlon:

As you will recall, in our February 5, 1987 meeting with you, we requested that Suzuki be afforded the opportunity for input in the scheduled update of the Commission's ATV Safety Alert. Both in our meeting and in our follow-up letter of February 13 (a copy of which is attached), we expressed serious concern over public statements from Commissioners and staff, and resulting media publicity, that created the misleading and erroneous impression that a significant number of children under 12 are being injured on ATVs intended for their use. Our concern was based primarily on statements linking Commission injury and fatality data on ATV-related accidents involving children under 12 with statements that children under 12 should not be riding any ATVs, including ATVs intended for use by children under 12. We specifically requested, therefore, that consistent with the CPSC's statutory mandate and basic fairness, the Commission exercise greater care to ensure that public statements by the Commission, individual Commissioners, and staff accurately reflect Commission data concerning accidents on ATVs intended for children under 12.

Contrary to the specific concerns which we raised in our meetings and our February 13 letter, the draft Consumer Product Safety Alert on ATVs and other information we have recently received makes it abundantly clear that the Commission persists deliberately in perpetuating the very same misleading and inaccurate impressions to which we objected earlier. Although there are a number of other seriously misleading statements in the alert, we understand that other industry members are addressing these items. Therefore, this letter deals only with the issue of inaccurate and misleading statements regarding use of ATVs by children under 12.

The safety alert cites the CPSC's data that 21 percent of the fatalities involve children under 12, but contains no mention that virtually all (over 99%) of those fatalities involve children riding as passengers or riding ATVs recommended for older youths or for adults. The alert also states that children under 12 should not operate any ATV because "typically they lack adequate physical size and strength, cognitive abilities, motor skills and perception to operate a motor vehicle safely."[1]

The misleading cause-and-effect implication of the Commission's citation to fatality data involving children under 12 and the alert's statement that children should not operate any ATVs could hardly be clearer. Although the safety alert elsewhere cites accident data, here the alert conspicuously avoids reference to pertinent accident data for the obvious reason that the data, as the staff has expressly acknowledged, tell a very different story than the safety alert seeks to have the public believe.

In order to correct the misleading and inaccurate impression created by the safety alert on the issue of injuries to children under 12 on ATVs intended for use by such children, the alert must expressly indicate that according to the CPSC's injury data (1) approximately 96% of the injuries to children under 12 involve children riding as passengers or operating ATVs intended for persons 12 or older, and (2) over 99% of the fatalities involving children under 12 involve children riding as passengers or operating ATVs intended for persons 12 or older.[1]

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[1] It should be noted that the human factors and medical reports upon which this statement apparently was based do not support the referenced statement. For example, the Essex Corporation human factors report found that children under 12 typically have the size and strength to operate 50-60 cc and even larger ATVs. *See also* Response of U.S. Suzuki Motor Corporation to Chairman Scanlon's February 18, 1987 Letter on Marketing of ATVs Intended for Children Under Twelve, Apr. 28, 1987, pages 10-17.

As we also pointed out in our meetings with you, with the other Commissioners, and in our February 13 letter, various national and local media reports, citing CPSC "data", are fostering the same erroneous impression regarding accidents involving children under 12 -- specifically, that the Commission's recommendation that children under 12 not ride ATVs intended for their use is based on CPSC accident data. This misleading and damaging impression is further promoted by recent interviews of CPSC staff officials which have mischaracterized CPSC actions. In a March 7 published interview in Motorcycle Product News Nick Marchica, ATV Task Force Chairman, is quoted as stating that "If you look at the data developed by experts under contract, and by the hazard data, it appears that kids under 12 should not be on machines of any size." (Emphasis added.) Subsequently, Mr. Marchica stated that "kids under 12 are also getting hurt on kids'-size machines." In view of the staff's recognition, as expressed in the September 30, 1986 staff report and in statements made at the November 19-20, 1986 staff briefing (including Mr. Marchica's own statements) regarding the absence of support in the accident data for any recommendation against continued marketing of 50-60 cc ATVs, Mr. Marchica's reported media statements are inaccurate, irresponsible, and patently misleading.

Suzuki requests that the Commission modify the safety alert as proposed above, and Suzuki again requests that the Commission and its staff discontinue irresponsibly issuing public statements which are inaccurate and misleading. We further request that Commission instead adhere to the agency's statutory requirements and principles of basic fairness in presenting to the public information that is responsible, accurate, and not misleading.

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[1] We note that the safety alert's discussion of children 12-15 riding adult-sized ATVs points out that most deaths have occurred on adult-sized ATVs. It is particularly disturbing, therefore, that the discussion of fatalities to children under 12 does not indicate that virtually all of the CPSC-reported fatalities involving this age group involve ATVs not intended for children under 12.

Sincerely,

John B. Walsh

John B. Walsh
Corporate Attorney
Manager, Legal Affairs
Department

cc: Vice Chairman Anne Graham
Commissioner Carol G. Dawson
Mr. Nick Marchica
Harry W. Cladouhos, Esq.

SUZUKI

U.S. SUZUKI MOTOR CORP.
P.O BOX 1100, 3251 EAST IMPERIAL HIGHWAY, BREA, CA 92621-6722

TEL (714) 996-7040 TELEX 69-3348 FAX (714) 970-6005 CABLE ADDRESS "COLLEDA"

February 13, 1987

HAND DELIVERED

Mr. Terrence Scanlon
Chairman
Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207

Re: Meeting of February 5, 1987

Dear Chairman Scanlon:

I want to express our appreciation to you and other CPSC officials for meeting with U.S. Suzuki representatives on February 5 to discuss our concerns about possible Commission action regarding ATVs sold for use by children under 12.

Allow me to take this opportunity to reiterate two concerns that we raised at our meeting -- specifically, the need for a hazard and risk analysis on 50-60cc ATVs (the only vehicles the industry sells for use by children under 12), and, secondly, the need for Commission sensitivity regarding dissemination of potentially misleading information regarding these vehicles.

1. The need for further hazard and risk analyses

As you will recall, we pointed out in our meeting and in our November 13, 1986 letter to you that the number of accidents occurring to children under 12 on 50-60cc ATVs is extremely low -- indeed, statistically insignificant. As you indicated, the CPSC's data and Suzuki's are in accord on this point. Also, as you know, Economic Analysis voted against the staff recommendation to discontinue marketing these vehicles because they believed that the low injury figures and the resulting risk analysis precluded any such action. Economic Analysis reached that conclusion despite the fact that the Epidemiology hazard analysis and the Economic Analysis risk analysis included some larger ATVs (up to 90cc) that are not intended for use by children under 12, thereby inflating the risk assessment figures.

In view of Economic Analysis' conclusions, our request for further hazard and risk analyses focusing specifically on 50-60cc ATVs may appear to be unnecessary. However, since the Commission's December 18 action is aimed specifically at models marketed for use by children under 12, and since 50-60 cc ATVs are the only models at issue, further hazard and risk analyses directed at such models should be done and can be accomplished without much difficulty.

Moreover, one issue which is of considerable concern to Suzuki and which was the subject of much discussion in the staff briefing is whether cessation of marketing of the 50-60 cc models will increase the number of children under 12 riding larger ATVs not designed for their use. It was pointed out in the staff ATV report and in the briefing that the risk to children under 12 riding larger ATVs is much higher than the negligible risk associated with riding smaller models. In fact, as you know, virtually all of the accidents that have involved children under 12 have occurred on the larger ATVs not intended for such use, and not on the 50-60 cc models.

We therefore believe it is important that the industry and the public know the CPSC staff's conclusion as to how much additional risk may be created by any Commission action that directly or indirectly encourages children under 12 to ride vehicles in which their risk of injury is, according to the staff's own findings, much higher than the insignificant risk associated with operation of 50-60 cc models. In view of the extremely low incidence of accidents on 50-60 cc models, if even a very small number of children were to move to larger vehicles as a result of the unavailability or decreased availability of the 50-60 cc models, the Commission would be responsible for increasing the risk to the public.

We understood from our meeting that you will raise our request for a further hazard and risk analysis with Commissioners Dawson and Graham. We very much appreciate your willingness to do so and look forward to hearing from you at your earliest convenience.

2. The need for dissemination of accurate information

As you know, during the course of the Commission's proceedings on ATVs, concerns have been raised both by you and by the industry regarding misleading or potentially misleading information being disseminated by the Commission to the public. For example, in March 1985 you authored a memorandum to the General Counsel which, among other things, raised legitimate concerns over the "affirmative dissemination by the Commission, or a single Commissioner, bearing generically on the safety of a consumer product or class of consumer products." A copy of that memorandum, which dealt specifically with ATVS, is attached for your convenience.

Dissemination of misleading information is naturally of great concern to Suzuki as well, especially in light of the Commission's December 18 vote regarding the request for voluntary cessation of marketing of child-size ATVs and certain public statements and media reports which have been made concerning that vote. We note, for example, that in your closing statement on December 18 (a copy of which is attached for your convenience) you refer to the "astounding 21%" ATV-related fatality rate involving children under 12 years of age; your statement thereafter discusses "child-size" ATVs and the "dangers" associated with "letting children under 12" ride ATVs.

We are confident that you share our concern that references to fatalities and injuries to children under 12 which also refer, without distinction, to risks associated with child-sized ATVs may create the misleading impression that such injuries and fatalities are attributable to the operation of ATVs intended for children under 12, when in fact that is clearly not the case. The unfortunate consequence of such inaccurate statements is to mislead the public into believing that based on Commission accident data, there is a significant risk of injury to children under 12 when operating ATVs intended for use by such children, when in reality Commission injury and fatality data overwhelmingly refute any such conclusions. Not surprisingly, various reports in the local and national media regarding the Commission's action on ATVs intended for children under 12, including the attached Time article, which we discussed at our meeting, reinforce the erroneous impression that substantial numbers of injuries and fatalities are occurring on ATVs intended for children under 12. This is unfortunate for all concerned, including the public, because it shifts the focus from the truth, namely, that any risk that may exist to children under 12 is clearly not on ATVs intended for such children, but on larger ATVs.

Suzuki therefore respectfully requests that the Commission exercise greater care to ensure that its public statements accurately reflect Commission data concerning accidents on ATVs intended for children under 12. We believe the Commission's statutory requirements and basic fairness dictate no less.

In this regard, we understand that the Commission staff, as directed in your December 18 motion, is preparing an update of the ATV Consumer Product Safety Alert. The CPSC staff has customarily cooperated with the industry in preparing such ATV safety alerts, thus helping to insure that inaccurate or misleading information is not disseminated to the public. Suzuki appreciates your commitment that the CPSC staff will solicit such industry cooperation in preparing this latest Safety Alert update as well. We therefore look forward to cooperating with the Commission on the pending Safety Alert update and other matters requiring the accurate dissemination of information to the public.

Thank you for your consideration and cooperation.

Sincerely,

U.S. SUZUKI MOTOR CORPORATION

John B. Walsh
Coporate Attorney
Manager, Legal Affairs Department

cc: Commissioner Carol B. Dawson
Commissioner Anne Graham
Mr. Nick Marchica

Enclosures

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Daniel Levinson
General Cousel

DATE : March 12, 1985

FROM : Terrence Scanlon
Chairman

SUBJECT: Section 6(b)(6), CPSA

The attached one-man consumer alert and virtual press release on Commission letterhead on ATVs again raises the issue on the affirmative dissemination by the Commission, or a single Commissioner, bearing generically on the safety of a consumer product or class of consumer products.

[redacted]

Clearly there is a need for a prompt and critical look at our 6(b)(6) operations here at the Commission. Please draft for Commission consideration as soon as possible Section 6(b)(6) regulations so that the Commission and the public, may know how the Commission determines the accuracy of generic information and what steps have been taken to assure that Commission data is not misleading.

Attachment

cc:
The Commission
Len DeFiore, Executive Director
Lou Brott, Media Relations
AEDs

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
(202) 634-7720

TO: CONSUMER PROTECTION OFFICES AND ORGANIZATIONS

RE: Rising Death & Injury Toll from All-Terrain Vehicles (ATVs)

This agency is examining the surge in deaths and serious injuries associated with 3-wheel ATVs. These recreational cycles with balloon-like soft tires are designed for off-road use on such terrains as sand, mud, water and hard-packed snow; and over fields, gullies, dunes, etc. Serious injuries jumped nearly eight-fold in the last three years, from 8,585 injuries in 1982 to 27,554 in 1983, to 66,956 in 1984. We also know of 104 ATV-related deaths within the past 3 years (1984 death toll of 48 is incomplete and expected to rise)—44% (46 victims) were kids under 16; 22% under 12, some as young as 3-7.

As the tragedies mount, sales are skyrocketing. Sales rose nearly five-fold in the last 5 years, from 136,000 vehicles in 1980 to 650,000 in 1984. Our staff estimates that 700,000 ATVs may be sold in 1985. Today there are about 1.8 million ATVs in use in the U.S.; by the end of 1985, 2.5 million may be in use.

A senior staff statistician recently observed that in his 12 years with this agency, he has never witnessed an emerging safety problem of these dimensions. Later this month, the Commission will consider what actions we might take to stem this toll of tragedy. Options range from preparing informational material on proper ATV use; to encouraging more and better training, rider certification, minimum user age, licensing, warnings, etc.; to working with the industry toward a voluntary or mandatory safety standard to improve vehicle stability and control; to halting future 3-wheeled ATV production; to possibly recalling all such vehicles previously sold.

You can help us deal with this risk by alerting your constituency to send me any information about ATV instability, learning of an incident, suffering an injury, etc.; as well as any personal observations, based on use, as to the ATV's configuration, loss of control, handling characteristics, speed, or overall safety. I will share such information with my fellow Commissioners and our staff. I sincerely appreciate your assistance.

March 7, 1985

Stuart M. Statler
Commissioner

U S CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D C 20207

CLOSING STATEMENT OF
CONSUMER PRODUCT SAFETY COMMISSION
CHAIRMAN TERRENCE SCANLON
ON ALL-TERRAIN VEHICLES

BETHESDA, MD
DECEMBER 18, 1986

Since 1982, at least 559 deaths and 233,000 injuries have been associated with the use of all-terrain vehicles (ATVs). Under any circumstances, such a toll would warrant a thorough investigation of both causes and consequences. But, with 46% of the fatalities involving children under 16 and an astounding 21% involving children under 12, the Consumer Product Safety Commission had a clear responsibility not only to investigate but to take prompt and effective action.

Today's vote by the Commission clearly indicates its commitment to fulfilling that responsibility. By voting to approve development of performance standards for ATVs, the CPSC has taken a necessary first step towards the development of a safer, more stable vehicle. And by promoting notice, warning and especially training through a combination of means, the Commission has laid a necessary foundation for the safer use of the ATVs already built. In addition, the technical information and other advice which will be provided by the Commission to the States will help the latter with any regulatory initiatives that they may deem appropriate.

As for the request to the ATV industry that it cease production of child size ATVs, the message here is clear. The ATV is not just another little tricycle that any child can safely ride. Even the smallest of ATVs is a relatively heavy, motorized recreational vehicle that can tip over or roll over bringing serious harm to even the most capable of child riders. Parents, along with industry representatives, should be forewarned of the dangers associated with letting children under 12 continue to ride ATVs and it is my hope that neither group will wait for the Commission to act before taking appropriate corrective action themselves.

While the cumulative impact of these measures on ATV deaths and injuries should be significant, they will not deprive ATV owners and riders from the vocational and recreational benefits that ATVs can provide. What these steps will do is help ensure that ATVs are not only as safe to operate as they can be but are operated as safely as they can be. For that reason, I support the steps the Commission has taken today and look forward to the positive results I feel confident they will produce. However, it should be stressed that today's action should not be viewed as foreclosing any other statutory remedies available to the Commission.